

AMS/FAST CHANGE REQUEST (CR) COVERSHEET

Change Request Number: 21-55

Date Received: May 13, 2021

Title: SAM.gov Reference Replacement of FAACO/FedBizOpps

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Policy and Guidance: (check all that apply)

- ☐ Policy
- ☒ Guidance
- ☐ Procurement Forms, Templates and Samples
- ☐ Real Property Templates and Samples
- ☐ Procurement Clauses
- ☐ Real Property Clauses
- ☐ Other FAST Tools and Resources

Summary of Change: FAA Contract Opportunities websites and FedBizOpps references were updated to SAM.gov.

Reason for Change: FAA contract opportunities references were changed to SAM.gov due to the discontinuation of FAACO and FedBizOpps platform switching to SAM.gov.

Development, Review, and Concurrence: AAP-110, AAP-100

Target Audience: Acquisition Workforce

Briefing Planned: No.

ASAG Responsibilities: None.

Section / Text Location: T3.2.2.3, T3.2.1.3, T3.8.7, T3.17

The redline version must be a comparison with the current published FAST version.

☒ I confirm I used the latest published version to create this change / redline

or

☐ This is new content

Links: <https://fast.faa.gov/docs/procurementGuidance/guidanceT3.17.pdf>;
<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.8.7.pdf>;
<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.2.1.3.pdf>;
<https://fast.faa.gov/docs/procurementGuidance/guidanceT3.2.2.3.pdf>

Attachments: Redlines and Finals.

Other Files: N/A.

Redline(s):

Section Revised: T3.2.1.3 – Implementation OMB Circular No. A-76

Procurement Guidance - (~~4/2021~~7/2021)

T3.2.1.3 - Implementing OMB Circular No. A-76 Revised 1/2009

A Guidance for Implementing for OMB Circular No. A-76

1 OMB Circular A-76, Performance of Commercial Activities

2 Applicability of AMS Revised 10/2018

3 Responsibilities Revised 1/2009

4 Primary Phases for A-76 Competitions

5 Preliminary Planning

6 Public Announcement (Official Start Date) Revised 7/2021

7 Competition Procedures Revised 1/2009

8 Post Competition Accountability

9 Adversely Affected Employees

10 The Agency Tender

B Clauses

C Forms

T3.2.1.3 - Implementing OMB Circular No. A-76 Revised 1/2009

A Guidance for Implementing for OMB Circular No. A-76

1 OMB Circular A-76, Performance of Commercial Activities

OMB Circular No. A-76, "Performance of Commercial Activities," states the policy of the Government to: (a) rely generally on private commercial sources for supplies and services, if certain criteria are met, while recognizing that some functions are inherently Governmental and must be performed by Government personnel; and (b) consider relative cost in deciding between Government and contractor performance. In comparing the costs of Government and contractor performance, the Government bases contractor cost of performance on firm offers.

2 Applicability of AMS Revised 10/2018

- a. The FAA follows A-76 policy and procedures, except when the Circular is inconsistent with AMS or other FAA statutory authority. The Circular requires compliance with the Federal Acquisition Regulation (FAR), such as when conducting standard and streamlined competitions, publicizing competitions, when establishing certain roles or responsibilities, and some decision-making. References to FAR, FAR-based processes or terminology, or other Government procurement requirements in the Circular are not applicable to FAA.
- b. Procurement procedures, except as noted in this guidance, are based on AMS procurement policy (section 3.0) and guidance. AMS is used to plan procurements; solicit, evaluate and select sources; resolve protests and disputes; and manage contracts.
- c. Except as described in this guidance, AMS-required decisions, mandatory planning documents, and lifecycle phase-related activities described in AMS policy (sections 1.0 and 2.0) are not applied to Circular A-76 competitions. AMS documentation, when applicable, is appropriately tailored. Joint Resources Council decisions follow A-76 milestones rather than AMS phases.

3 Responsibilities Revised 1/2009

- a. *Service Director of the organization responsible for conducting A-76 competitions:*

Appoints an acquisition team to lead the competition. An acquisition team is a cross-functional, empowered team given an operating budget and resources necessary to acquire specific services identified as commercial in nature by a Federal Activities Inventory Reform (FAIR) Act inventory.

- b. *Acquisition Team*

- (1) Develops an Implementation Strategy and Planning (ISP) document, tailored as necessary.

(2) Develops public announcements, evaluation criteria and plans, screening information requests, evaluation reports, and debriefs potential service providers.

c. Joint Resources Council (JRC):

(1) Prior to issuance of the official start date (public announcement):

- (a) Baselines the cost of as-is performance;
- (b) Approves the acquisition strategy;
- (c) Revalidates the need for the function identified in the functional scoping study.

(2) Prior to issuance of the final screening information request (SIR):

- (a) Establishes an activity cost baseline (independent government cost estimate);
- (b) Approves the ISP and Risk Management Plan;
- (c) Approves the Performance Work Statement (PWS) and Quality Assurance Surveillance Plan (QASP).

(3) Prior to Source Selection decision:

- (a) Approves the final cost baseline;
- (b) Approves the recommended source selection decision.

4 Primary Phases for A-76 Competitions

The general process for the public-private competition within a competitive sourcing study falls into four distinct phases: Preliminary Planning, Public Announcements, Competition Procedures, and Post Competition Accountability.

5 Preliminary Planning

The general process for the public-private competition within a competitive sourcing study falls into four distinct phases: Preliminary Planning, Public Announcements, Competition Procedures, and Post Competition Accountability.

a. *Functions*. Before initiation of a competition, a FAIR Act inventory will have already identified the function or activity as a commercial activity suitable for competition; the existing service is deemed to satisfy needed capabilities.

(1) A functional scoping study conducted during the preliminary planning phase of a public-private competition inventories functions that deliver "as is" services/capabilities. It also determines whether users have continued need for all, some, or none of those services. The functional scoping study incorporates mission need related activities and is used to document mission requirements. Therefore, a Mission Need Statement is not prepared.

(2) From the functional scoping study, an initial set of technical and performance requirements is derived and documented in a functional scoping summary document (FSSD). The FSSD refines functions and subfunctions to describe minimum, required levels of technical performance. Functions are described in such a way as they can be measured and evaluated. The FSSD is developed before the public announcement and approved by the JRC.

b. *Market Survey*. A market survey is conducted to determine if sufficient interest and capability exists in the marketplace to perform the service being competed. This market survey is in lieu of AMS-prescribed investment analysis activities. A Requirements Document, Investment Analysis Report, and Acquisition Program Baseline are not required.

c. *Initial Acquisition Strategy*. A high-level acquisition strategy is developed and approved by the JRC.

d. *As-is Cost Baseline*.

(1) A cost baseline is developed for the service as it is currently provided. This cost baseline is presented to the JRC for information before the public announcement.

(2) Baseline costs for the competition are calculated in accordance with the guidance provided in Attachment C of OMB Circular A-76 (Revised).

6 Public Announcement (Official Start Date) Revised 7/2021

The public announcement starts the competition process. The announcement indicates that the FAA will conduct the source selection in accordance with AMS. The FAA uses Contract Opportunities (www.faaeo.faaon.SAM.gov) to make public announcements. ~~Information posted on Contract Opportunities is automatically copied to FedBizOps.~~

7 Competition Procedures Revised 1/2009

a. *Stakeholder Involvement.* A overarching goal is user and/or customer satisfaction along with achievement of planned value and performance levels. This requires the acquisition team to work with key stakeholders, including affected employees and associated collective bargaining units, to ensure that all issues necessary for success are identified and resolved.

b. *Notice of OMB Waivers.* Any specific deviations from the Circular that require a waiver from the OMB will be described in the SIR and public announcement.

c. *AMS Planning Documents.* The detailed strategy for the overall program is defined in an Implementation Strategy and Planning (ISP) document. An ISP is:

- (1) Prepared to describe program actions and activities;
- (2) Developed prior to release of the final SIR; and
- (3) Approved by the JRC.

d. *Availability of Data.* Historical data and other information available to the ATO or the MEO Team are made available by the Contracting Officer (CO) to all prospective providers. However, information related to the performance or productivity of an incumbent MEO is not released.

e. *Source Selection.*

- (1) An ISP, appropriately tailored, describes the specific procurement approach to be used.
- (2) The Source Selection Authority (SSA) in the Circular is synonymous with the FAA's Source Selection Official (SSO).
- (3) Use of AMS clauses "Notice of Cost Comparison" and "Right of First Refusal of Employment" is mandatory. The public announcement also states that award to a private potential service provider is contingent on results of the cost comparison.
- (4) Cost and pricing data is required from all potential service providers in accordance with the Circular. Common costs will be identified in the SIR.
- (5) The SIR includes a requirement for potential service providers to submit a quality control plan.
- (6) *Special Considerations*
 - (a) Private sector offers and agency tenders are not evaluated separately. The CO, SSO, and evaluation team ensure that all potential service providers are treated fairly.

(b) Deficiencies in an offer or tender are handled by the CO in accordance with the provisions of Attachment B of the Circular.

(c) To the maximum extent possible, Government property is made available for use by service providers. The acceptance and use of such property, however, is not mandatory.

(7) Within three days after contract award, the CO provides written notice to each potential service provider remaining in the competition, but not selected for award. This notice includes:

(a) The number of potential service providers solicited;

(b) The number of proposal received;

(c) The name and address of each potential service provider receiving an award;

(d) The items, quantities, and any stated unit prices of each award (The total contract price may be furnished if it is impractical at this time to provide unit prices but the unit prices must be made available upon request.);

(e) In general terms, the reasons the potential service provider's proposal was not accepted, unless the price information reveals the reason. In no event shall a potential service provider's cost breakdown, profit, overhead rates, trade secrets, manufacturing process or techniques, or other confidential business information be disclosed to any other potential service provider. f.

Period of Performance.

(1) Contracts awarded under the Circular are for a minimum of three years, excluding the phase-in period. OMB approval is required for performance periods exceeding five years, excluding the phase-in period. Performance periods for the agency tender and for private sector potential service providers will be identical.

(2) Potential service providers, including the MEO, propose a phase-in plan to replace the incumbent service provider. The plan, intended to minimize disruption and start-up requirements, considers recruiting, hiring, training, security limitations, and other special considerations. The phase-in period is considered the first performance period of a new contract.

g. *Contests.* The FAA will follow the FAA Dispute Resolution process in total, which supersedes the provisions of Section B, Part F, of the Circular. The Office of Dispute Resolution for Acquisition

(ODRA) is available to assist all parties of an A-76 acquisition, including the MEO, when objections arise concerning the competition or source selection decision.

h. *No Satisfactory Response*. If no satisfactory offer or tender is received in response to an A-76 solicitation, the CO determines the reasons for non-responsiveness and proposes a course of action to the Competitive Sourcing Official (CSO). The CSO then takes action in accordance with the provisions of Attachment B to the Circular.

i. *New Technology and Operational Processes*. There is no required testing of existing services when they become the responsibility of a new service provider unless new services or technologies are introduced. The purpose of test and evaluation remains the mitigation of potential operational risks and the verification of operational readiness for the In-Service Decision. The Acquisition Team determines the type of testing, if required, prior to transition to a new service provider. An In-Service Decision is not required to deliver a set of services using existing technology or processes. The In-Service Decision is a key program milestone if new technology or service concepts are introduced as a result of the competition or during the service delivery timeframe.

j. *Lessons Learned*. The office responsible for conducting the acquisition maintains a database of lessons learned from each competition to ensure a consistent competition process and development of best practices.

k. *Competitive Sourcing Official (CSO)*. The CSO is responsible for the implementation of the Circular within the FAA. Specific duties of the CSO are spelled out in the Circular.

8 Post Competition Accountability

a. In-Service Management begins when the new service provider initiates phase-in. At this point an organization known as the Continuing Government Activity (CGA) assumes responsibility for monitoring and assessing performance of the service provider. Members of the CGA are appointed by the responsible service director. The manager of the acquisition team coordinates closely with the manager of the CGA to assure a smooth transition of responsibilities.

b. For a performance decision favoring the agency, the CO establishes an MEO letter of obligation with the official responsible for performance of the MEO. Appropriate portions of the solicitation and the agency tender are incorporated into the letter of obligation which is then distributed to appropriate individuals, including the ATO.

c. The CGA will accomplish the post competition accountability procedures required by the Circular and will institute the appropriate monitoring mechanisms.

9 Adversely Affected Employees

a. In accordance with the FAA Performance Management System (PMS) Chapter 1, paragraph

14, Federal civilian employees serving competitive or excepted service appointments in Tenure Groups I, II, or III, who are identified for release from their competitive level by the FAA as a direct result of a performance decision resulting from a Circular competition are considered adversely affected employees.

b. The new service provider must give such employees the right of first refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-Government employment conflict of interest standards.

c. Within 10 days after contract award, the CO provides the new service provider a list of all Government employees who have been or will be adversely affected or separated as a result of the award. The new service provider then reports, within 120 days after contract performance begins the names of individuals identified on the list who were hired within 90 days after contract performance began.

10 The Agency Tender

a. The Agency Tender is the FAA management plan submitted in response to a Circular competition. It includes the MEO, a cost estimate, an MEO quality control plan, an MEO phase- in plan and other elements required by the Circular and the SIR. It is not required to include a labor strike plan, a small business strategy, a subcontracting plan goal, participation of small disadvantaged businesses, licensing or other certifications, nor past performance information (except in unique circumstances identified in the Circular). The date for delivery of offers and tenders is the same.

b. When preparing the Agency Tender the MEO Team may consider the use of commercial contractors or teammates to help achieve performance requirements. In such cases the MEO is required to comply with the AMS.

B Clauses

[view contract clauses](#)

C Forms

[view procurement forms](#)

Section Revised: T3.2.2.3 – Complex Source Selection

Procurement Guidance - (~~4/2021~~7/2021)

T3.2.2.3 - Complex Source Selection Added 9/2020

A Complex Source Selection Method Added 9/2020

- 1 General Revised 9/2020
- 2 Source Selection Team Roles and Responsibilities Added 9/2020
- 3 Security of Source Selection Information Added 9/2020
- 4 Evaluation Plan Added 9/2020
- 5 Selection Methodology Added 9/2020
- 6 Screening Information Request (SIR) Added 9/2020
- 7 Communications with Offerors Added 9/2020
- 8 Evaluation Factors Added 9/2020
- 9 Evaluation Revised 4/2021
- 10 Selection and Award Added 9/2020
- 11 Debriefing of Offerors Added 9/2020
- 12 Oral Presentations Added 9/2020

B Other Source Selection Considerations Added 9/2020

- 1 Public Announcement and Announcement of Competing Offerors ~~Added 9/2020~~ Revised 7/2021
- 2 Past Performance ~~Added 9/2020~~ Revised 7/2021
- 3 Cancelling a Screening Information Request Added 9/2020
- 4 Section 508 of Rehabilitation Act Added 9/2020
- 5 Spare Parts Added 9/2020
- 6 Supplier Process Capability Evaluation and Appraisal Added 9/2020
- 7 Tiered Evaluation Revised 1/2021
- 8 Qualified Vendors List (QVL) Added 9/2020
- 9 Two Phase Source Selection Added 9/2020

C Clauses Revised 9/2020

D Forms Revised 9/2020

- 1 Section 508 Checklist Added 9/2020

E Appendix Added 9/2020

- 1 Guide for Establishing a Qualified Vendors List (QVL) Added 9/2020
 - 2 Past Performance Samples for Products, Services, and Construction Added 9/2020
 - 2.1 Sample 1 - Past Performance Instructions Added 9/2020
 - 2.2 Sample 2 - Past Performance Evaluation Factors Added 9/2020
 - 2.3 Sample 3B - Past Performance Questionnaire Added 9/2020
 - 2.4 Sample 3C - Business Management Past Performance Summary Added 9/2020
 - 2.5 Sample 4 Survey Form Added 9/2020
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T3.2.2.3 - Complex Source Selection Revised 9/2020

A. Complex Source Selection Method Added 9/2020

1. General Revised 9/2020

- a. *Purpose.* AMS Policy Section 3.2.2.3 outlines requirements for source selection. This section contains information about processes and techniques for conducting a competitive complex source selection. The Contracting Officer (CO) uses business judgment to tailor source selection based on factors such as complexity, dollar value, urgency, and resources available.
- b. *Procurement Integrity.* The Procurement Integrity Act applies to personnel involved in source selection. This Act and other similar statutes and regulations impose stringent requirements for safeguarding source selection and contractor proposal information, and other integrity issues. There are civil and criminal penalties for violating these requirements. All personnel involved in the source selection process must maintain the integrity of the procurement, and must understand the prohibitions and certification requirements of the Act and similar statutes and regulations. Any questions or other issues regarding procurement integrity are directed to the legal counsel assigned to the source selection. (See AMS Guidance T3.1.8)
- c. *Bias or Conflict of Interest.* Personnel involved in the source selection must not have any bias or conflict of interest that would affect the source selection. Financial interests in offerors or employment discussions with offerors are examples of conflicts of interests that preclude an employee from participating in a source selection.

2. Source Selection Team Roles and Responsibilities Added 9/2020

The responsibilities described below are guidelines to help ensure successful source evaluation and selection. The source selection team managing the procurement may be comprised of the Source Selection Official, Source Evaluations Team, Contracting Officer, Product or Service Team Lead or Director of the Requiring Service Organization, nongovernmental evaluators and advisors, and support personnel. The composition of the source selection team will vary based on the size and complexity of the procurement.

- a. *Source Selection Official.* The Product or Service team lead or Director (or equivalent position) of the requiring organization is the source selection official (SSO) for a procurement under an investment program subject to the Joint Resources Council (JRC) process (unless the JRC otherwise designates an SSO). For procurements not subject to the JRC investment-decision process, the CO is the SSO. The SSO's responsibilities include the following:

- (1) Assure team competence, cohesiveness, and effectiveness;

- (2) Approve evaluation plans and assure the evaluation conforms to the plan and to the stated evaluation criteria; and

- (3) Make down-select decisions and assume full authority to select the source for award.
- (4) Ensure the selection process is conducted properly and according to applicable policies and laws;
- (5) Establish the Source Evaluation Team (SET) and ensures the team has the skills, expertise, and experience to perform the evaluation;
- (6) Ensure actual or apparent conflicts of interest are avoided; Ensures premature or unauthorized disclosure of source selection information is avoided;
- (7) Concur with the CO's decision to release the SIR (if the SSO is other than the CO); and
- (8) Make the final source selection decision for an award, and ensures the rationale is documented before contract award.

b. *Source Evaluation Team (SET)* . Source evaluation is a multi-disciplined, team effort. As appropriate, the team includes representatives from functional areas such as contracting, program/technical, legal, logistics, and user organizations. The size and composition of the SET varies, depending on the nature of requirement. Whether the team is large or small, it is structured to ensure teamwork, unity of purpose, and appropriate communication among the team members throughout the process. A key to selecting personnel is identifying experience, education, and business and technical skills required for the evaluation. Required skills and experience are defined with enough flexibility to allow for the substitution of training for experience. The source evaluation team properly and efficiently performs source evaluation, and supports the source selection decision and related activities. Their responsibilities include the following:

- (1) Draft all SIRs;
- (2) Formulate the source evaluation plan;
- (3) Review existing lessons learned reports that provide meaningful insight into the procurement;
- (4) Ensure an in-depth review and evaluation of each submitted screening document against FAA requirements and stated evaluation criteria;
- (5) Prepare the evaluation report (including recommendations, if applicable), using sound business judgment, to assist the SSO make down selection and/or award decisions;
- (6) Oversee all procedural and administrative aspects of the procurement;

- (7) Select advisors to assist the team in its evaluation, if required;
- (8) Prepare documentation for the SSO's decision rationale, if requested by the SSO;
and
- (9) Participate in all debriefings;

c. *Contracting Officer*. The CO's responsibilities include the following:

- (1) Serve as the SSO for procurements not subject to the JRC investment-decision process;
- (2) Ensure, when applicable, conflict of interest documentation is obtained from all source selection team members; with legal counsel, determine if any conflicts or apparent conflicts of interests exist; and if so, resolve them;
- (3) Ensure source selection team members are briefed on sensitivities of the source selection process to include but not limited to the following:
 - the prohibition against unauthorized disclosure of information (including their responsibility to safeguard proposals and any documentation related to the source selection team proceedings);
 - requirements concerning conflicts of interest; and
 - ensure source selection team members provide nondisclosure of information statements
- (4) Coordinate communications with industry and conduct all debriefings;
- (5) Control all written documentation issued to industry;
- (6) Lead screening, selection, and debriefing phases of source selection;
- (7) Issue letters, public announcements, SIRs, SIR amendments, and other procurement documents; and
- (8) Ensure the contract is signed by a contractor's representative with the authority to bind the contractor; with legal counsel, ensure all contractual documents comply with applicable laws, regulations, and policies.

d. *Product or Service Team Lead or Director of the Requiring Organization*. The product or service team lead or Director's (or equivalent position) responsibilities include the following:

- (1) Serve as SSO if the procurement is subject to the JRC investment-decision process (unless otherwise designated by the JRC);

- (2) Assure FAA's program needs are acquired through the appropriate source selection process;
 - (3) Assure SIRs include adequate definition of requirements; and
 - (4) Assure qualified technical evaluators, if required, assist the source evaluation team in the evaluation.
- e. *Advisors.* The source evaluation team may appoint advisors to provide specialized expertise and guidance not otherwise available on the team.
- f. *Nongovernmental Evaluators and Advisors.* The source evaluation team may use nongovernmental personnel as evaluators or advisors. Nongovernment personnel must comply with FAA's conflict of interest and nondisclosure of information policies. The SIR must include notice of any nongovernmental participation.
- g. *Support Personnel.* Once the primary evaluation team is identified, additional support personnel may be desired or required. Examples of such personnel include administrative support, librarian/document-control personnel, and information technology support.

3. Security of Source Selection Information Added 9/2020

- a. *Required Certificates.* The SSO and each SET member (including support personnel and advisors) must sign nondisclosure of information and conflict of interest certificates. (See AMS T3.1.6.A.2 Requirement for an Agreement Regarding Non-Disclosure of Information).
- b. *Administrative Considerations.* Each procurement varies, but administrative needs may include private facilities for evaluators and discussions with offerors, securable storage space for source selection materials, and other items such as computers, special software, phones, copiers, etc.
- c. *Handling Source Selection Information.*
 - (1) SET members must handle proposal and evaluation material in a manner consistent with "For Official Use Only" or, as appropriate, a higher security classification. The SET establishes sufficient safeguards to protect the material whether it is in their possession or it is being disseminated, reproduced, transmitted, or stored. Additionally, procedures are established for proper disposal of the material when it is no longer required. (See AMS Procurement Guidance T3.13.1.A.7, Records Retention, and FAA Order 1350.15C Records Organization, Transfer and Destruction Standards).
 - (2) The Procurement Integrity Act precludes individuals from knowingly disclosing source selection information and contractor bid or proposal information before award of a contract to which the information relates. The SSO may, however, authorize release of source selection information after the SIR is issued but before contract award to other authorized

Government personnel who have signed a non-disclosure statement, provided the release would not jeopardize the integrity or successful completion of the procurement.

d. *Security Responsibilities.* All SET members are responsible for the security of source selection information. In complex source selections, it may be beneficial to designate members of the SET to oversee and perform security control functions. Security procedures may also be needed for the physical facilities where source selection occurs, such as a sign in and out log, identification to access the area, visitor (e.g. maintenance/service personnel) control, or key or card control access. A security briefing for the SET may be used to emphasize that each member understands the following:

- Each member is responsible for security of the evaluation and proposal materials and other source selection and proprietary information related to the procurement;
- Each member is knowledgeable of, and will adhere to, governing security procedures and regulations;
- Each member does not discuss, communicate, or otherwise deal with matters related to the source selection with any individual not assigned by the SSO, and then only within appropriately secure areas; and
- Each member shall challenge any apparent unauthorized person within the physical location of the evaluation.

4. Evaluation Plan Added 9/2020

The evaluation plan outlines the people, schedule, process, criteria and other information relevant to evaluating offeror responses to a SIR, and the basis for selecting an offeror for award. It is approved by the SSO, Evaluation Team Lead, CO, and Legal before receiving responses to a SIR requesting screening or qualification information. The evaluation plan is source selection sensitive information, so it must not be disclosed to anyone not authorized by the SSO to receive the information. The size and detail of the evaluation plan is based on the complexity of the procurement, but at a minimum it includes the following:

- Name of the SSO and SET members;
- Evaluation factors, relative importance of factors, and standards for rating offerors against the factors; and
- Basis for selection and award

5. Selection Methodology Added 9/2020

Designing a procurement strategy includes an effective evaluation methodology. Depending on the circumstances, it may be in FAA's best interest to either do the following:

- (1) *Award to best value offeror.* Under this method, both cost/price and non-cost/price factors are assessed based on the evaluation criteria, and the SSO selects the offeror proposing a combination of these factors representing the best value to FAA. The SSO considers non-cost strengths and weaknesses, risks, and cost/price for each offeror and applies business judgment to select the

offeror representing the best value.

- (2) *Award to the lowest-priced, technically acceptable offeror.* This method may be the best value when FAA would not realize any value from a proposal exceeding minimum technical requirements. The SIR establishes certain standards that an offeror must meet to be considered technically acceptable. An offeror does not receive any additional credit for exceeding the established standards. The award is then made to the lowest-priced, technically acceptable offeror.

6. Screening Information Request (SIR) Added 9/2020

- a. *Purpose.* The FAA obtains information and offers from vendors through a SIR. The SIR includes information necessary for offerors to understand what FAA is buying, what information to provide, and how responses will be evaluated. The success of a procurement is directly linked to the quality of the SIR. A well-written SIR includes the following:
- Facilitates a fair competition;
 - Limits criteria to differentiators that add value; Clearly details information required from vendors; Clearly identifies evaluation and award criteria; and
 - Conveys a clear understanding of FAA's requirements.
- b. *The SIR Process.* For a given procurement, FAA may make a selection decision after one SIR, or may have a series of SIRs (with a screening decision after each one) to arrive at the selection decision. This process depends on the types of products, services, or real property to be acquired and the specific source selection approach. Generally, when multiple SIRs are contemplated, the initial SIR requests general information, and subsequent SIRs requests successively more specific information. Initial SIRs need not state firm requirements, thus allowing FAA to convey its needs to offerors in the form of desired features, or other appropriate means. Firm requirements ultimately are established in all contracts.
- c. *SIR Contents.* Each SIR contains the following information:
- Paperwork Reduction Act number on the cover page;
 - A statement identifying the purpose of the SIR (request for information, request for offer/solicitation for offer, establishment of a QVL or screening);
 - A definition or statement of need or requirements;
 - A request for specific information (with specific page and time limitations, if applicable);
 - A closing date stating when submittals must be received in order to be considered or evaluated;
 - Evaluation criteria (and relative importance, if applicable);
 - A statement informing offerors how communications with them will be conducted during the screening; and
 - An evaluation/procurement schedule (including revisions, as required).
- d. *Categories of SIRs.*

- (1) *Qualification Information.* Qualification information, used to qualify vendors and establish qualified vendor lists (QVLs), are requested when a resultant QVL will be used for multiple FAA procurements. Qualification information screens those vendors meeting FAA's stated minimum capabilities / requirements to provide a particular product or service. Once qualification information is requested, received, and evaluated according to the evaluation plan, a QVL is established for the given product/service and vendors meeting FAA's qualification requirements are listed on the QVL. (See AMS Procurement Guidance T3.2.2.3.B.8 for more information on QVLs.)
 - (2) *Screening Information.* Screening information allows FAA to determine which offeror(s) are most likely to receive the award, and ultimately which offeror(s) will provide FAA with the best value. The screening information requested in the SIR should focus on information that directly relates to the key differentiators for the procurement.
 - (3) *Request/Solicitation for Offer.* A request/solicitation for offer is a request for an offeror to formally commit to provide the products, services, or real property required by FAA under stated terms and conditions. The response to the request/solicitation for offer is a binding offer, which is intended to become a binding contract if signed by the CO. The request/solicitation for offer may take the form of a SIR, a proposed contract, or a purchase order.
- e. *Changes in SIR Requirements.* If FAA's requirements change after release of a SIR, then all offerors competing at that stage are advised of the change(s) and allowed to update their submittals accordingly. The SSO may waive a requirement at any time after release of a SIR, without notifying other offerors, if the SIR states offeror specific waiver requests will be considered, and the waiver does not affect a significant requirement that changes the essential character or conditions of the procurement.
- f. *Common Problems.*
- (1) *Inconsistency among the SIR and related documents.* Having the SIR and related documents to be aligned is critical. This is particularly important for the evaluation plan and the SIR to be consistent.
 - (2) *Inconsistency within the SIR.* Avoiding inconsistencies between the description of FAA's requirements, instructions on how to prepare a proposal, and information related to the evaluation factors is important. These inconsistencies may be caused by different groups of people developing the different SIR sections without proper coordination. Such inconsistencies can result in less advantageous offers, necessitate changes/amendments to the SIR, cause delays, lead to offerors losing confidence in the process, or result in litigation.
 - (3) *Requesting Too Much Information from Vendors.* The instructions for preparing and submitting proposals focus on requesting only information necessary for the evaluation. The SIR requirements, each evaluation factor and subfactor, and the SIR preparation

instructions are linked. Request only the essential information needed to evaluate SIRs against the evaluation factors and subfactors and do not ask for information that will not be evaluated. Instructions that require voluminous information can cause potential offerors to forego responding in favor of a less costly business opportunity. Excessively large proposals may increase the time and costs associated with the evaluation. Proposal page limitations are encouraged, but they need to be clearly defined and tailored to the needs of the acquisition. Focus exclusively on differentiators; failure to do so compromises the ability to identify the best offeror.

(4) *Unnecessary Use of Design Requirements.* The description of FAA's requirements in the SIR can have a significant effect on a source selection using a tradeoff process. Use of detailed design requirements or overly prescriptive statements of work severely limits the offerors' flexibility to propose their best solutions. Functional or performance-based requirements provide flexibility and are used to the extent practicable. While it may be more difficult to develop evaluation criteria and conduct the evaluation process using this approach, the benefits warrant it. These benefits include increased competition, access to the best commercial technology, better technical solutions, and fewer situations for protests.

g. *Ways to Improve the SIR.* A multi-disciplined team develops the SIR. The members are stakeholders in the procurement and continuously coordinate with each other to ensure consistency of the SIR with other documents such as the evaluation plan. Open communications with vendors is used to improve the SIR and to also promote understanding of FAA's requirements. This can be accomplished through various forms of communication, such as releasing draft statements of work or SIRs, advance procurement planning briefings for vendors, one-on-one meetings, or conferences with potential offerors.

7. Communications with Offerors Added 9/2020

- a. Communications with potential offerors takes place throughout the source selection process. During the screening, selection, and debriefing phases of source selection, communications are coordinated through the CO. All SIRs clearly inform offerors of how communications will be handled during the initial screening phase. The purpose of communications is to ensure mutual understanding between FAA and offerors about all aspects of the procurement, including the offerors' submittals/proposals. Information disclosed as a result of oral or written communication with an offeror may be considered in the evaluation of an offeror's submittal(s). To ensure that offerors fully understand the intent of the SIR and FAA's needs, FAA may hold a pre-submittal conference and/or one-on-one meetings with individual offerors. One-on-one communications may continue throughout the process, as required, at the discretion of the SET.
- b. Communications with one offeror do not necessitate communications with other offerors, because communications will be offeror-specific. Regardless of the varying level of communications with individual offerors, the CO ensures such communications do not give any offeror an unfair competitive advantage. During these and future communications, as applicable, FAA encourages offerors to provide suggestions about all aspects of the

procurement. Communications may necessitate changes in FAA's requirements or SIR. Where communications do not result in any changes in FAA's requirements, FAA is not required to request or accept offeror revisions. The use of technical transfusion is always prohibited. Auctioning techniques are prohibited, except in the use of "commercial competition techniques."

8. Evaluation Factors Added 9/2020

a. Evaluation Factors and Subfactors.

- (1) Selecting the appropriate evaluation factors and subfactors is key to the source selection process. The factors and subfactors give offerors an insight into significant considerations FAA will use to select the best value offer. Structure the evaluation factors and subfactors and their relative importance to clearly reflect the needs of the acquisition. Evaluation factors and subfactors from the evaluation plan must be in Section M (or equivalent) of the SIR.
- (2) Factors and subfactors are definable and measurable in readily understood terms. They also represent the key areas of importance and emphasis to be considered in the source selection decision. Factors and subfactors should be limited to the essential elements to distinguish among the information/offers; i.e., will be true differentiators.
- (3) Common evaluation factors are technical, cost/price, past performance, and small business participation. Other evaluation factors may be appropriate, and one or more levels of subfactors may be needed.
- (4) Steps involved in formulating evaluation factors and subfactors include the following:
 - Conduct market research as a starting point for developing criteria;
 - Brainstorm critical factors and subfactors;
 - Identify key differentiators;
 - Define the differentiators as evaluation factors and subfactors;
 - Determine and define the evaluation factors and subfactors;
 - Relative order of importance; and
 - Assess feedback during SIR(s)
- (5) *Evaluation Weights.* Assign relative importance to each evaluation factor and subfactor. Tailor the relative importance to specific requirements. Use priority statements to express the relative importance of the evaluation factors and subfactors. Priority statements relate one evaluation factor (or subfactor) to each of the other evaluation factors (or subfactors). For example:

“Technical is the most important factor and is more important than all of the

remaining factors combined. Technical is significantly more important than past Performance. The past performance factor is more important than the cost factor and small business participation factor combined. The cost factor is more important than the small business participation factor."

- b. *Numerical and Adjectival Ratings.* When using the tradeoff process, the evaluators assess the non-cost portion(s) of the offer and associated performance and proposal risks using numerical or adjectival ratings. The success of an evaluation is not dependent upon the type(s) of ratings used, but rather on the consistency with which the evaluators use them. For this reason, adjectival ratings must include definitions for each rating so that the evaluators have a common understanding of how to apply them.
- c. *Result of Proposal Evaluation.* At the end of an evaluation, each factor and sub-factor are evaluated, the merits and risks of a proposal are documented and adjectival ratings are assigned.

9. Evaluation Revised 4/2021

- a. *Conduct Training.* Before receipt of proposals, each evaluator becomes familiar with all pertinent documents, e.g., SIR, evaluation plan, and rating scales, etc.. The SET conducts training that includes an overview of these documents and the source selection process, with instructions on properly documenting each offeror's strengths, weaknesses, and risks. Training also includes ethics requirements and the protection of source selection information. This training is especially crucial when evaluators have little or no source selection experience.
- b. *Documenting the Evaluation.* The SET performs an in-depth, systematic evaluation of offerors' proposals against evaluation factors and subfactors in the SIR(s). All evaluations must be documented. While the specific evaluation processes and tasks vary, the basic objective is to provide information about each offeror's strengths and weaknesses so the SSO can make an informed and reasoned decision. An orderly method for identifying, recording, and tracking strengths and weaknesses is imperative. Evaluation findings being supported with narrative statements is critical. Ratings alone are not conclusive information on which to make a source selection decision. All determinations relating to changes in requirements after release of the SIR must be documented in the evaluation report.
- c. *Assignment and Use of Offeror Code Names.* Once proposals are received, the SET considers establishing a code name for each of the offerors. This helps protect the identities of offerors submitting proposals, the proprietary information in their proposals, and the contents of the evaluation reports and source selection documentation. The code names are assigned by the SET and then communicated to all evaluation personnel prior to the start of proposal evaluation. All SET members, evaluation team members, and support personnel involved in the evaluation and source selection must then use any assigned code names rather than the actual offeror names in all discussions and in all written documentation and communication (including the SSO Briefing). The SSO would not know the actual offeror names until after contract award. Additional guidance related to the assignment of code names is as follows:

- (1) Code names are based on a series of like items (e.g., states such as Missouri,

Arkansas, and Nebraska for an acquisition with three offerors);

(2) Care is taken to avoid choosing a series of names where one may be perceived as more valuable than another (e.g., if using precious metals, gold may be perceived as more valuable than bronze, or if using colors, red may be perceived more negatively than green);

(3) If there are more than three or four offerors, alphabetic characters are used for ease of reference (e.g., Offeror A, Offeror B etc.); and

(4) Code names would not be assigned in the following situations:

- ☐ Only one proposal received; or
- ☐ Where the names of all offerors competing are publicly known in accordance with AMS clause 3.2.2.3-72 "Announcing Competing Offerors" (July, 2004).
- ☐ For real property acquisitions

Note: Regardless of whether code names are used, SET members, evaluation team members, and support personnel are responsible at all times for the proper treatment of source selection sensitive information from the evaluations and/or proposals.

d. *Past Performance Evaluations.* The past performance evaluators assess the performance risk associated with each proposal. The final assessment describes the degree of confidence in the offeror's likelihood of successful contract performance based on that offeror's demonstrated record of performance under similar contracts. (See AMS Procurement Guidance T3.2.2.3.B.2 for guidance on evaluating past performance.) For real property acquisitions, past performance will be considered as part of vendor responsibility determination. (See AMS Procurement Guidance T3.2.2.7)

e. *Cost/Price Evaluations.* For competitive fixed-priced or time and material contracts, the evaluation could be as simple as performing price analysis to determine reasonableness. Price realism may also be used for price proposal analysis on competitive fixed-priced or time and material contracts. For competitive cost-reimbursement contracts, the offerors' estimated costs are analyzed for both cost realism and reasonableness. The cost realism analysis enables evaluators to determine each offeror's most probable cost of performance. This precludes an award decision based on an overly optimistic cost estimate. Even when cost realism analysis is performed to evaluate individual cost elements of a contractor's proposal, some form of price analysis is needed to ensure that the proposed price is reasonable. (See AMS Procurement Guidance T3.2.3 for guidance on cost and price evaluation methods.)

10. Selection and Award Added 9/2020

a. *Decisions.* After the evaluators complete their evaluation, the results of the evaluation are presented to the SSO. The SSO may do the following:

- ☐ Make a selection decision (see below);
- ☐

Make a screening decision by screening those offerors determined to be most likely to receive award, thus continuing the screening phase;

- ☐ Amend and re-open to initial offerors; or Cancel
- ☐ the procurement.

- b. *Presenting the Evaluation to the SSO.* The SET prepares documentation of the evaluation to present to the SSO. The SSO uses this documentation as an aid when making a decision based on business judgment about which proposal represents the best value. At the request of the SSO, the SET may present the evaluation results through one or more briefings.
- c. *Source Selection Decision.* The SSO must document his/her rationale for selecting the successful offeror. The source selection decision document explains how the successful proposal compared to other offeror's proposals based on the evaluation factors and subfactors in the SIR, and discusses the judgment used in making any tradeoffs. If the SSO disagrees with a finding of the SET, the SSO's rationale is part of the decision document. When the SSO determines, in a best value tradeoff source selection, that the best value proposal is other than the lowest-priced proposal, the decision document justifies paying a price premium regardless of the superiority of the successful proposal's non- cost rating. The justification clearly states the benefits or advantages FAA receives for the added price and why it is in FAA's best interest. This justification is required even when the SIR indicates non-cost factors are more important than cost/price. The SSO should consult with legal counsel to review the source selection decision document to assure that the decision clearly articulates the business judgment of the SSO.
- d. *Awarding the Contract.* After the SSO signs the source selection decision document, the CO executes and distributes the contract, subject to completing other requirements before award such as Congressional notification, if applicable.

11. Debriefing of Offerors Added 9/2020

- a. *Overview.* The CO notifies all offerors who participated in the competitive process that they may request a single debriefing within three working days from receipt of award notification. Because each offeror puts considerable resources into preparing and submitting a proposal, fairness dictates a prompt debriefing and an explanation of why a proposal was unsuccessful.
- b. *Purposes of a Debriefing.* A debriefing accomplishes the following:
 - ☐ Explains the rationale for the offeror's exclusion from the competition or non-selection for award;
 - ☐ Instills confidence in the offeror that it was treated fairly;
 - ☐ Assures the offeror that appropriately qualified personnel evaluated the proposal according to the SIR and applicable policies and laws;
 - ☐ Identifies strengths and weaknesses in the offeror's proposal so the offeror can prepare better proposals in future FAA procurements;
 - ☐ Gives the offeror an opportunity to provide feedback about the SIR process, communications, and the source selection; and
 - ☐ Reduces misunderstandings and reduces the risk of protests.

A debriefing is not any of the following:

- ☐ Page-by-page analysis of the offeror's proposal;
- ☐ Point-by-point comparison of the proposals of the debriefed offeror and other offerors; and
- ☐ Debate or defense of FAA's award decision or evaluation results.

The debriefing must not reveal any information prohibited from disclosure or exempt from release under the Freedom of Information Act.

- c. *Notification of Debriefing.* The CO informs the offeror of the scheduled debriefing date by electronic means with return receipt to acknowledge receipt. If the offeror requests a later debriefing date, the CO requires the offeror to acknowledge in writing that it was offered an earlier date, but requested a later date instead. This procedure protects FAA's interests if the offeror subsequently files a protest.
- d. *Debriefing Methods and Location.* The CO debriefs one unsuccessful offeror at a time. The CO selects the method and location of the debriefing. Although face-to-face debriefings are frequently used, a debriefing may be by telephone or other electronic means acceptable to the offeror and FAA. It may be burdensome for an offeror to attend in person and the needs of the offeror are given due consideration. The CO may provide an advance copy of the debriefing to the offeror and allow the offeror to provide written questions for FAA to review before the debriefing.
- e. *Attendees.* The CO selects FAA attendees, and chairs and controls the debriefing. The CO asks an offeror to identify all individuals by name and position who will attend the debriefing. Normally, the CO does not restrict the number of personnel the debriefed offeror may bring unless there are space limitations. Ensuring appropriate FAA personnel attend the debriefing to be meaningful is important. The CO may rely on SET members to address specialized areas of the offerors' proposals. Legal counsel participates in preparation and review of the debriefing materials. If the offeror's legal counsel will attend the debriefing, FAA legal also attends. If there are indicators a protest is likely, inform FAA's legal counsel. The CO must not deny a debriefing because a protest is threatened or has already been filed.
- f. *Preparing for a Debriefing.* The extent of preparation varies with the complexity of the source selection. Sometimes, preparing debriefing charts is sufficient. Other times, a written script and dry run rehearsals may be beneficial. Because debriefings are time sensitive, preparation may begin before proposal evaluation is complete. SET members may assist in preparing debriefing materials. The CO briefs all FAA personnel who will attend the debriefing on their roles during the debriefing.
- g. *Information Provided.* In a post-award debriefing, the CO discloses the following:
- The evaluation rating; significant strengths and weaknesses; strengths and weaknesses; and deficiencies of the debriefed offeror's proposal;
 - The debriefed offeror's total evaluated price/cost and the awardee's total evaluated price/cost; and

- A general summary of the rationale for the award decision.

h. *Handling Questions.* Ideally, the CO gets all questions in writing. As a general rule, FAA personnel do not answer questions “on the fly.” The CO and other FAA personnel caucus to formulate a response before providing an answer. At the end of the debriefing, the CO advises the offeror that the debriefing is officially concluded. At the discretion of the CO, questions submitted by the offeror after the date on which the debriefing was conducted may be answered. In such cases, the CO must advise the offeror that the information is not considered part of the official debriefing (thereby not affecting the protest time period).

12. Oral Presentations Added 9/2020

- a. *Introduction.* Oral presentations (sometimes referred to as oral proposals) provide offerors an opportunity to orally present information they would normally provide in writing. Oral presentations may be beneficial in a variety of procurements, and they are most useful when requirements are clear, complete, and stated in performance or functional terms. Oral presentations are ideal for gathering information about how qualified the offeror is to perform the work, how well the offeror understands the work, and how the offeror will approach the work. Oral presentations may be conducted in person or via video teleconference. A videotaped presentation does not constitute an oral presentation because it is not a real-time exchange of information.
- b. *Scope of the Oral Presentation.* Before deciding if oral presentations are appropriate, the SET must select the evaluation factors. Then the SET decides whether the information needed to evaluate these factors can be better presented orally, in writing, or through a combination of both. Oral presentations can convey information in diverse areas such as responses to sample tasks, understanding the requirements, experience, and relevancy of past performance. Offerors should be required to submit briefing materials in advance of the presentations. This allows FAA attendees to review the materials and prepare any questions. Oral statements cannot be incorporated into the contract by reference, so any information to be made part of the contract needs to be submitted in writing. At a minimum, the offeror must submit certifications, representations, and a signed offer (including any exceptions to SIR terms and conditions) in writing. The offeror must submit any other factual data, such as cost or pricing data or subcontract commitments, as part of a written proposal, too.
- c. *SIR Information.* If oral presentations are appropriate, the SIR must notify offerors that FAA will use oral presentations to evaluate and select an offeror for award. The proposal preparation instructions must contain explicit instructions and guidance regarding the extent and nature of the process to be used. The instructions discourage elaborate presentations because they may detract from the information being presented. At a minimum, include the following information in the SIR:
 - ☐ The type of information the offeror must address during the oral presentations and how it relates to the evaluation criteria;
 - ☐ The required format and content of the presentation charts and any supporting documentation;
 - ☐ Any restrictions on the number of charts and/or the number of bullets per chart and how

- FAA will handle material that does not comply with these restrictions; The
- ☐ required submission date for the presentation charts and/or materials;
- ☐ The approximate timeframe when the oral presentations will be conducted and how FAA will determine the order of the offerors' presentations;
- ☐ Whether any rescheduling will be permitted if an offeror requests a change after the schedule has been established;
- ☐ The total amount of time each offeror will have to conduct their oral presentation;
- ☐ Who must make the presentation and a requirement that the offeror provide a list of names and position titles of the presenters;
- ☐ Whether the presentation will be video or audio taped;
- ☐ The location of the presentation site and a description of the site and resources available to the offeror;
- ☐ Any rules and/or prohibitions regarding equipment and media;
- ☐ How FAA will treat documents or information referenced in the presentation material but never presented orally;
- ☐ Any limitations on FAA-offeror interactions during and after the presentation
- ☐ Whether the presentation will constitute discussions;
- ☐ Whether FAA will use the information in the oral presentation solely for source selection purposes or whether such information will become part of the contract (which will require a subsequent written submission of that information); and
- ☐ Whether or not the offeror includes any cost (or price) data in the presentation.

d. *Timing and Sequencing.* Because preparing and presenting an oral presentation involves time and expense, offerors not likely to be candidates for award do not have to conduct oral presentations. This can be an important consideration with small businesses. When this is a concern, consider down selections to establish the likely candidates for award before oral presentations. The SIR clearly articulates the methods for down selection. The CO may draw lots to determine the sequence of the offerors' presentations. The time between the first and the last presentation is as short as possible to minimize any advantage to the offerors that present later.

e. *Time Limits.* Establish a total time limit for each offeror's presentation. It is not advisable to limit the time for individual topics or sections within the presentation; this detail is the presenter's responsibility. If planning a question and answer (Q&A) session, it is excluded from the allotted time and there is a separate time limit for Q&A. The amount of time allotted is determined using business judgment based upon the complexity of the procurement, experience, and lessons learned.

f. *Facility.* The presentations are conducted at a Government-controlled facility. This helps guard against surprises and ensures a more level playing field. Nothing precludes conducting an oral presentation at an offeror's facility. This may be more efficient if site visits or other demonstrations are part of the source selection. If using a Government-controlled facility, it may be made available for inspection and, if warranted, a practice session. Allowing offerors to get acquainted with the facility will help ensure that it does not detract from the presentation content.

g. *Recording the Presentations.* Having an exact record of the presentation could prove useful both

during the evaluation process and in the event of a protest or litigation. The oral presentations can be recorded using a variety of media, e.g., videotapes, audio tapes, written transcripts, and/or a copy of the offeror's briefing slides or presentation notes. The SET is responsible for determining the method and level of detail of the record. If using videotaping, allow for the natural behavior of the presenters. If slides or view graphs are used, the camera views both the lectern and screen at the same time. Place the microphones so that all communications can be recorded clearly and at adequate volume. Every effort is made to avoid letting the recording become the focus of the presentation. The recording, which is considered source selection information, will become part of the official record. Provide a copy to the offeror and seal and securely store the master copy of the recording to ensure there are no allegations of tampering in the event of a protest or court action.

- h. *FAA Attendance.* The CO chairs every presentation. All FAA personnel involved in evaluating the presentations attend every presentation.
- i. *Presenters.* The offeror's key personnel who will perform or personally direct the work being described conduct their relevant portions of the presentations. Key personnel include project managers, task leaders, and other in-house staff of the offeror's and/or their prospective key subcontractor organizations. This will avoid the oral presentation becoming the domain of a professional presenter, which would increase costs, detract from the advantages of oral presentations, and adversely affect small businesses.
- j. *Reviewing the Ground Rules.* Prior to each presentation, the CO reviews the ground rules with the attendees. This includes discussing any restrictions on FAA-offeror information exchanges, information disclosure rules, documentation requirements, and housekeeping items. These ground rules are included in the SIR. If the evaluation includes a quiz, the CO discusses the related ground rules. For example, whether the offeror may caucus or contact outside sources by phone before answering. The ground rules must avoid too much control because it could inhibit the presentation. The CO controls all exchanges during the presentation if discussions will not be conducted.
- k. *Evaluation of Presentations.* Evaluations should be performed immediately after each presentation. Using evaluation forms will help the evaluators collect their thoughts and impressions. Evaluators must document the rationale for their evaluation conclusions.

B. Other Source Selection Considerations Added 9/2020

1 Public Announcement and Announcement of Competing Offerors Added 9/2020 Revised 7/2021

All procurements over \$150,000 must be publicly announced on the Internet or through other means. If the Internet is used, as a minimum the announcement should be placed on the ~~ContractingContract~~ Opportunities page ~~contained in the FAA Acquisition System Toolset (FAST)-on SAM.gov~~. This requirement does not apply to real property acquisitions, emergency actions, purchases from an established Qualified Vendors List (QVL) or Federal Supply Schedule (FSS), exercise of options, modifications, or changes. For actions under \$150,000, a public announcement is optional.

For products, services, and construction procurements, publicizing the names of offerors competing for FAA contracts can be a method of encouraging small businesses to seek subcontracting opportunities with potential FAA contractors. The Contracting Officer (CO) may publicly announce names and addresses of offerors responding to a screening information request (SIR), provided the SIR includes a notice to the offerors and no offeror objects to the release of this information. The CO may make the public announcement after initial offers are received and/or *after* making a down select decision.

2 Past Performance ~~Added 9/2020~~Revised 7/2021

- a. General. Past performance can be one indicator of a prospective contractor's future performance. To help ensure that the best performing contractors are providing products, services, construction, and real property to the FAA, past performance should be evaluated during source selection. If past performance is not evaluated, reasoning must be documented.
- b. Recommendations for Using Past Performance in a Screening Information Request (SIR).
 - (1) General Considerations. Factors chosen for evaluation should be reasonable, logical, coherent, and directly related to requirements in the statement of work (SOW). The key to successful use of past performance in the screening process is a clear relationship between the SOW, instructions to offerors, and evaluation criteria. Past performance information that is not important to the current acquisition should not be included.
 - (2) Responsibility Determination. When the CO or procurement team considers it appropriate, the SIR states past performance will be used to evaluate the responsibility of the contractor. A contractor with a record of unsatisfactory past performance should be screened out of the selection process.
 - (3) Past Performance as a Separate Non-Cost/Price Factor. Including past performance as a stand-alone evaluation factor is better than integrating it with other non-cost/price evaluation factors. The source and type of past performance information to be included in the evaluation and the relative importance of past performance compared to price or cost and any other evaluation factors is at the broad discretion of the procurement team (CO, legal counsel, program official and other supporting staff).
 - (4) Non-Relevant Contract Experience/New Contractors. The SIR must state whether new contractors or contractors with non-relevant contract experience will be considered, or rated negatively.
 - (5) Size, Scope, Complexity, and Time-frame. The SIR requests the offerors for references for ongoing projects and/or contracts completed within a specified period of time (three to five years is reasonable but can be for a shorter period if appropriate) for contracts that are similar in size, scope, and complexity to the SOW. Each of these terms (size, scope, and complexity) should be SOW specific and defined in the SIR. Gather past performance history from sources other than those provided by the offeror. Such sources include the

Contractor Performance Assessment Reporting System (CPARS) database, PRISM database along with other agency contracting personnel, and listings of contract awards posted on [FAAthe Contract Opportunities: page in SAM.gov.](#)

- (6) Sub-factors. The procurement team must pay attention to what differentiates a "good" performer from a "poor" performer. Past performance sub-factors are shaped by those differentiators, be limited in number, and are tailored to the key performance criteria in the SOW.
- (7) Relative Importance. The SIR may state whether all sub-factors are relatively equal, or whether certain sub-factors are more important than others.
- (8) Major Subcontractors. If applicable, if major subcontractors are likely to perform critical aspects of the contract, the procurement team evaluates past performance of these subcontractors to determine the overall likelihood of success of the prime contractor. The SIR states how such information will be evaluated.
- (9) Affiliates, Divisions, etc. The past performance of the affiliates, divisions, etc. that are actually performing the work is considered. The procurement team must consider the degree of control that a parent organization will exert over the affiliate, division, etc. in determining whether both the parent organization and affiliate, division, etc. past performance is evaluated.
- (10) Number of References. Ask for at least two points of contact (program/technical and contracts) for each past performance reference to assure that all aspects of the offeror's performance can be evaluated.
- (11) Use of Other Sources. The instruction to offerors includes a statement that the Government may use past performance information obtained from sources other than those identified by the offeror, and that the information obtained may be used for both the responsibility determination and the best value decision. For each non-Federal reference, the SIR includes an authorization to release information.
- (12) Inclusion of Past Performance Questionnaire (PPQ). The PPQ does not need to be included as an attachment in the SIR. If the PPQ is included in the SIR, note the past performance questions are not limited to those on the questionnaire.
- (13) Sample SIR Provisions. Appendix 2 to this Guidance contains examples of SIR provisions and an example client authorization letter. The example is not the only way to include past performance in the SIR. Each SIR must contain instructions and evaluation information that best reflects the individual acquisition.

c. Evaluating Past Performance.

- (1) Relation to SIR. Instances of performance, both good and poor, are noted and related to SIR requirements. If problems were identified on a prior contract, the role the sponsor may have played in that result is taken into account. Evaluations consider the number and

severity of problems, the demonstrated effectiveness of corrective actions taken (not just planned or promised), and the overall work record.

- (2) Current Versus Older Performance. The age of the performance being evaluated may be weighted so that performance on older contracts receives less weight than performance on more recent contracts.
- (3) Method of Scoring. The final past performance rating may be reflected by a color, a number, adjectival, or a combination of these methods, depending upon what system is being used overall to indicate the relative ranking of the offerors. A past performance rating is not a precise mechanical or scientific process and must include sound business judgment. Therefore, the documentation of the final rating includes a logical description of the underlying reasons for the conclusions reached.
- (4) Disclosure of Negative Information. If the procurement team receives negative information that would have a significant effect on the likelihood of award to an offeror, then the procurement team discloses the information and provides the offeror an opportunity to respond. This is true even if the SIR states that award may be made on initial offers. The SIR includes the appropriate provisions notifying the offerors that FAA retains this option.
- (5) Evaluating Disputed/Negative Information. When the procurement team receives negative information, or information that is disputed, they should carefully consider the offeror's response and determine what weight to apply, based on the facts obtained from the questionnaire, interview, or other sources. The file must be documented to explain why the procurement team assigned a particular rating. This is especially important in situations involving unresolved disputes.

d. Obtaining Information on an Offeror's Past Performance.

- (1) Reference Checks. The most commonly used method of obtaining past performance is to conduct reference checks from a variety of sources, including previous FAA program and contracting personnel, other Federal agencies, state and local governments, and commercial contractors.
- (2) Other Sources. Dun & Bradstreet can obtain information on past performance on specific contractors for the FAA (Dun & Bradstreet charges for this information). In lieu of FAA paying for the report, the SIR may require offerors to provide a copy of a recent past performance report prepared by Dun & Bradstreet. Quality certifications and awards can also serve as a useful source of past performance information.
- (3) Timetable. The process of collecting past performance information begins as soon as the proposal evaluation begins. It may be best to establish a team devoted entirely to this task during the screening, especially if FAA anticipates receiving a large number of proposals. Researchers must locate and question sources of information, either in person, by telephone or in writing. If the information shows a history of poor performance, the procurement team can eliminate the proposal from the competition as non-responsible.

- (4) Questionnaire or Survey Form. The first step in obtaining information from sources is to develop a questionnaire, or survey form, that reflects the evaluation rating system that will be used to assess the offerors strengths and weaknesses for the contract being considered. Questions are worded so that interviewees understand precisely what they are being asked to describe. To maintain accurate records and facilitate verification, the questionnaire (survey) record form include: Interviewer's name, agency/company name, reference's name (to be held in confidence), full mailing address and telephone number, date the questionnaire is completed, and description of the contract effort discussed. An example of a questionnaire is found in Appendix 2.4 Sample 3B.
- (5) Information Collection. Once the questionnaire is prepared, the procurement team should contact references. There are various ways to collect the information: Face-to-face interviews, mailing the questionnaires, telephone interviews, electronic mail (ensuring security measures are taken), or some combination of these.
- (6) Number of References. The SIR requires the offeror provide at least two references (one from the program office/one from contracts) for each of its proposed past performance examples. Additional references could be identified during interviews in order to survey a large enough sample to identify patterns in performance.
- (7) Setting Up Interviews. Being well organized and efficient is important when conducting the interview so as not to waste the interviewee's time. It is helpful to call the reference to make an appointment to conduct an interview, rather than telephoning the references unannounced, thereby catching them unprepared or with little time to respond. If possible, the questionnaire is mailed or faxed to the reference in advance of the appointment. Interviewers take copious notes on the questionnaire to ensure that all information is captured. Tape recording is a good means for capturing all of the conversation; however, tape recording the conversation may cause the interviewee discomfort and reduce the amount of information provided. If tape recording is used during the interview, ensure the interviewee is aware of and agrees to the use of recording devices.
- (8) Conducting Interviews. Evaluators look for patterns of either favorable or unfavorable overall performance, rather than focusing on individual successes or failures. It is important to look for actions that demonstrate high performance and not just unfavorable performance. This will help to get away from the old responsibility determination mode of just looking at performance problems. There appears to be a tendency for references to give an upward bias to ratings. The interviewer should ask enough questions to discriminate between "good" and "excellent." Evaluators request copies of any existing documentation in support of excellent or negative findings (i.e., correspondence, modifications, determinations, etc.). Investigating negative findings in- depth prior to presenting them to offerors, in discussions if held, will alleviate unnecessary delays. Prior to concluding the interview, the evaluator asks the reference for a summary opinion, e.g., how would the interviewee rate the contractor's overall performance and would the interviewee like to do business with the contractor again?

- (9) **Concluding Telephone and Face-to-Face Interviews.** Immediately following a telephone or face-to-face interview, the interviewer prepares a narrative summary of the conversation (this can be the questionnaire as filled in by the interviewer) and send it to the reference for verification, preferably by certified mail return-receipt requested, fax, or electronic mail. The narrative states explicitly that if the reference does not object to its content within the time specified, it would be accepted as correct. If the reference indicates that the narrative is incorrect, then a corrected narrative is sent for verification. If a reference will not agree to the record and satisfactory corrections cannot be agreed upon, the record cannot be relied upon and must not be included in the offeror's rating. Another source may provide the same information, however.
- (10) **Mailing Questionnaires.** If mailing questionnaires is the chosen method for collecting past performance information, mail the questionnaires to the references, provide a time-frame for return of responses, and wait for the responses. If mailed questionnaires are not received in a timely manner, follow-up telephone interviews are suggested (following guidance above if telephone interview occurs).

3 Cancelling a Screening Information Request Added 9/2020

The CO, with the concurrence of the procurement team, may cancel a SIR at any time during the solicitation process. The notification of cancellation may be made through the same mechanism as the initial or subsequent SIRs. The CO must document cancellation for the contract file.

4 Section 508 of Rehabilitation Act Added 9/2020

a. Requirements for Accessibility.

Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) requires that persons with disabilities that are either Federal employees or members of the public seeking information or services from a Federal department are to have access to and use of information and data comparable to the access and use of information and data by Federal employees or members of the public who do not have disabilities. Section 508 applies to contract awards, task orders, delivery orders, orders under Government-wide Schedules and Interagency Agreements for electronic and information technology (EIT), as defined below. The procurement team (CO, program official, legal counsel, and other supporting staff) will insert Section 508 requirements into SIRs that include development, procurement, maintenance, or use of electronic and information technology unless an exception applies (see Exceptions to Section 508 below).

b. Definition.

Electronic and information technology (EIT) means any equipment or interconnected system or subsystem of equipment used in automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For purposes of the preceding sentence, equipment is used by the FAA:

- (1) If the equipment is used directly by FAA; or

(2) Is used by a contractor under a contract with FAA that:

- (a) Requires use of such equipment; or
- (b) Requires use, to a significant extent, of such equipment in performance of a service or furnishing of a product.

c. EIT Products. EIT includes, but is not limited to the following:

- (1) Computers and other office equipment;
- (2) Software and firmware;
- (3) Services (including support Services);
- (4) Telecommunication products;
- (5) Information kiosks;
- (6) Office equipment such as copiers and fax machines; and
- (7) Websites.

d. Exceptions to Section 508.

(1) Section 508 does not apply to EIT if the following applies:

- (a) Acquired by a contractor incidental to a FAA contract;
- (b) For a national security system;
- (c) Located in space frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment;
- (d) That would impose an undue burden on FAA (see paragraph f. below); or
- (e) That would impose a fundamental alteration in the nature of an EIT product or its components.

(2) EIT is not available

- (a) When procuring commercial items, FAA must comply with those EIT standards that can met with supplies or services that are

available in the commercial marketplace in time to meet FAA's delivery requirements.

- (b) When EIT is not available, the contract file must be documented as outlined below.
- (3) Documentation supporting a Section 508 exception must be maintained in the contract file. The FAA Section 508 Procurement Checklist found below in Section D. "Forms" can aid in regulatory compliance. Required documentation includes the following if applicable:
 - (a) Applicable technical provisions of the Access Board's standards;
 - (b) Market research performed to locate items that meet the applicable technical provisions;
 - (c) The specific provisions that cannot be met;
 - (d) Undue burden documentation (see paragraph f. below); and
 - (e) Other applicable documentation.
- (4) If an exception applies preventing FAA from meeting all of the applicable technical provisions, FAA may acquire EIT that meets some of those provisions.

e. Applicability.

- (1) All EIT procured on or after June 21, 2001 must comply with Section 508 standards.
- (2) The FAA does not have to retrofit EIT procured before June 21, 2001.

f. Approval of Undue Burden.

When applying the requirements of Section 508 (see paragraph a. "Requirements for Accessibility" above) would impose an undue burden, FAA must provide individuals with disabilities covered by Section 508 the information and data by an alternative means of access that allows the individual to use the information and data. Undue burden is defined as a significant difficulty or expense to the FAA.

- (1) Documentation of an undue burden must include the following:
 - (a) A thorough and fully supported explanation as to why and to what extent compliance with each provision of "36 CFR Part 1194 – Electronic and Information Technology Accessibility Standards" would create an undue burden for the EIT being procured; and

(b) Dollar value, market research performed, and alternative means of access that will be provided for individuals with disabilities to use the information or data. Alternative means of access include (but are not limited to):

- (i) Voice, fax, or relay service;
- (ii) Qualified sign language interpreters;
- (iii) Teletypewriters (TTY);
- (iv) Internet posting;
- (v) Captioning;
- (vi) Text-to-speech synthesis;
- (vii) Readers;
- (viii) Personal Assistants; or
- (ix) Audio description.

(2) Final approval authority of an undue burden determination resides with the FAA Administrator. The Secretary of the Department of Transportation (DOT) formed the Undue Burden Advisory Board (UBAB), which will advise FAA on undue burden matters. The process for undue burden determinations is:

- (a) Review by DOT Chief Information Officer;
- (b) Review by DOT General Counsel;
- (c) Review by UBAB and their submission of a recommendation to the FAA Administrator in the form of an "Undue Burden Report"; and
- (d) Consideration of the report by the FAA Administrator or delegate. The resulting decision is final.

g. Sources of Further Information.

- (1) U.S. Architectural and Transportation Barriers Compliance Board (U.S. Access Board)
- (2) Government-wide Section 508 website
- (3) FAA Section 508 website (FAA only)

5 Spare Parts Added 9/2020

- a. *Shipping Spare Parts.* For all shipments of spare parts, the contractor must include a packing list that includes at least the name, part number, Commercial and Government Entity (CAGE) Code, quantity, unit price, and national stock number (if available). Contracts that require shipment of spare parts include Clause 3.2.2.3-73 to establish this contractual requirement.
- b. *Spare Parts for Nationally Furnished Project Materiel.*
 - (1) *Requirements.* The contracting officer includes coverage for spare parts in the screening information request and subsequent contract that facilitates availability, accessibility and tracking of spare parts.
 - (2) *SIR Provision.* For contracts that will require the purchase and delivery of spare parts, the contracting officer establishes a discrete contract line item number for initial site and depot-level spare parts list contract line item number (CLIN) and corresponding delivery date. The CO also includes the SIR provision 3.2.2.3-74, "Submission of Initial Site and Depot-level Spare Parts List" as part of the instruction to vendors on the preparation of their SIR submissions to assure that the parts list will be furnished as part of the SIR submission.
 - (3) *Contract Requirements.* The contracting officer includes a separately priced CLIN for the site and depot-level spare parts list and corresponding delivery due date of this contract deliverable. The list contains each item's name, part number, Commercial and Government Entity (CAGE) Code, unit price, national stock number (if available) and the quantity.

6 Supplier Process Capability Evaluation and Appraisal Added 9/2020

- a. *General.* This guidance is designed to assist the Source Selection Official (SSO) in considering process capability of potential suppliers during proposal evaluations, mitigating process-related risk of the supplier during contract/agreement performance, and for fostering process improvement of the supplier throughout the lifecycle.
- b. *Scope/Applicability.* Supplier Process Capability Evaluation and Appraisal are intended for use in new acquisitions and agreements, but may also be incorporated into existing contracts or agreements.
- c. *Expected Benefits.*
 - (1) *Acquirer.* The FAA can expect reduced risk in supplier selection and in meeting program objectives by motivating suppliers to improve their processes without forcing compliance to specific practices. Other benefits would include enhanced quality, predictability, performance and cost effectiveness of products and services acquired.
 - (2) *Supplier.* Suppliers can expect reduced risk in meeting contract requirements by identifying and addressing process deficiencies that might negatively impact project

success. Other benefits would include improved performance by identifying and addressing process deficiencies in critical process areas and potential for earning additional award fee where such incentives are part of the contract.

d. *Pre-award.* In the early phase of planning a source selection, the SSO determines whether process capability will be considered as a risk factor for source selection. The following criteria are considered when making this decision:

- (1) The performance of specific processes is considered critical to accomplishment of the mission;
- (2) The product or service being acquired is considered crucial to the FAA;
- (3) A major component of the product or service to be provided is considered to be unprecedented;
- (4) The total estimated value of a contract for research, engineering, and development (R,E&D) is equal to or greater than \$70 million, or a contract for acquisition is equal to or greater than \$300 million;
- (5) There is lack of information on offeror's past performance or process capability data, or the past performance or process capability of the offeror is weak; and
- (6) The product or service is especially complex.

If process capability will be used as an evaluation factor, or as an adjustment to risk at either the area or factor level, the SIR must include request for information on current status and commitment to process improvement, including evidence indicating process capability. The SIR must also identify particular aspects of the suppliers' performance capabilities that are considered critical to success of the contract, such as architecture and design, safety, security, human factors, integration, risk management, or quality assurance.

Process capability appraisals can be used after award to validate and confirm the successful offeror's proposal and/or to identify risks associated with process deficiencies to be addressed during contract performance. In order for a post-award appraisal to occur, the SIR must indicate that a post-award appraisal will be performed on the successful offeror's processes that are identified as critical or potentially risky.

e. *Post-award.* Post-award appraisals may be conducted on existing contracts with well-established project(s), or on new contracts using target projects selected from the supplier's sponsoring organization.

f. *Contract/Agreement Requirements.* Considerations in developing contract/agreement requirements include use of trade-off analysis to establish the level of surveillance of strong or weak areas. For example, if a supplier is strong in an area, it is inefficient to check on that area in the same way that would be applied in an area found to be weak. Additional Award fees may also be used as an incentive. Contract/Agreement performance requirements include completion of

initiatives to remove critical deficiencies identified. Completion may be a factor in award fees. Depending on the decision of the SSO, contract requirements may include the following:

- (1) Risk mitigation plans to remove deficiencies noted during pre-award;
- (2) Performing scoped post-award and follow-up appraisal(s);
- (3) Risk mitigation plans to remove deficiencies noted in post-award appraisal;
- (4) Government “surveillance” for specific areas (weaknesses) to be addressed;
- (5) An adequate reporting or insight mechanism to facilitate monitoring the risk mitigation plan;
- (6) Consideration for creating additional process strengths; and
- (7) Improvement in performing process improvement activities.

Risk mitigation planning describes in detail the schedule and actions that will be taken to remove deficiencies noted during the evaluation and selection process and those uncovered in the appraisal process, if a post award appraisal is performed.

7 Tiered Evaluation Revised 1/2021

a. General.

- (1) Tiered evaluation of offers is a process by which FAA promotes small business participation while providing FAA a means to continue the procurement if small business participation is insufficient.
- (2) The Contracting Officer (CO) may use tiered evaluation of offers to promote competition in each tier of small business concerns while still allowing other than small business to participate without issuing another SIR.
- (3) The CO must consider the tiers of small business concerns prior to evaluating offers from other than small business concerns.

b. Utilizing Tiered Evaluations.

- (1) The CO must specify in the SIR that a tiered evaluation of offers will be used in source selection, and offers from other than small business concerns will only be considered after the determination that an insufficient number of offers from responsible small business concerns were received.
- (2) The CO will specify the tiered order of precedence for evaluating offers in the SIR, and determine the applicable tiers based upon market research of the availability of small

business concerns. An example of a tiered order of precedence is (descending in order) as follows:

- (a) Socially and economically disadvantaged business (SEDB) expressly certified by the Small Business Administration (SBA) for participation in SBA's 8(a) program;
 - (b) Service-disabled veteran owned small business (SDVOSB);
 - (c) Women-Owned Small Business (WOSB);
 - (d) Historically Underutilized Business Zone (HUBZone) small business;
 - (e) Small business (SB); and
 - (f) Other than small business.
- (3) Once offers are received, the CO will evaluate a single tier of offers according to the order of precedence specified in the SIR. If no award can be made at the first tier, the evaluation will proceed to the next lower tier until award can be made. If no award can be made at the first tier, offerors from the first tier continue on in the evaluation and are evaluated against offerors from each subsequent tier.

8 Qualified Vendors List Added 9/2020

A Qualified Vendors List (QVL) is a list of service or product providers who have had their products or services examined, tested or evaluated and who have satisfied all applicable qualification requirements. QVLs are intended as a mechanism to establish a pool of qualified vendors, any of which FAA would be satisfied with the products delivered or services performed. Pre-screening vendors allows only those most qualified contractors to perform a particular service or provide a particular product during a specific period. QVLs are most appropriate when the contracting office can reasonably anticipate recurring or repetitive requirements for the same or similar supplies or services. For detailed guidelines on establishing a qualified vendors list, the procurement team should refer to Appendix 1 Guide for Establishing a Qualified Vendors List (QVL).

9 Two-phase Source Selection Added 9/2020

- (a) *General.* A Contracting Officer (CO) may utilize a two-phase process to solicit offers and select a source for award. The contracting officer can choose to use this optional method of solicitation when deemed beneficial to the FAA in meeting its needs.
- (b) *Phase One.*

- (1) The CO must make a public announcement in accordance with AMS T3.2.2.3.B.1, except that the notice must include the following information:

- a) Notification that the procurement will be conducted using the specific procedures identified under this Section.
- b) A general notice of the scope or purpose of the procurement that provides sufficient information for sources to make informed business decisions regarding whether to participate in the procurement.
- c) A description of the basis on which potential sources are to be selected to submit offers in the second phase. (For real property acquisitions, the CO may use a market survey as means to identify sources that would submit offers in the second phase.)
- d) A description of the information that is to be required to be submitted if the request for information is made separate from the notice.
- e) Any other information that the CO deems is appropriate.

(2) *Information Submitted by Offerors.* Each offeror must submit basic information such as the offeror's qualifications, the proposed conceptual approach, costs likely to be associated with the approach, and past performance data, together with any additional information requested by the CO.

(3) *Selection for participating in second phase.* The CO must select the offerors based on the Phase One criteria that are eligible to participate in the second phase of the process. The CO must limit the number of the selected offerors to the number of sources that the CO determines is appropriate and in the best interests of the FAA.

(c) *Phase Two.*

(1) The contracting officer must conduct the second phase of the source selection consistent with T3.2.3.3.A.

(2) Only sources selected in the first phase will be eligible to participate in the second phase.

C. Clauses Revised 9/2020

[view contract clauses](#)

D. Forms Revised 9/2020

[view procurement forms](#)

1 Section 508 Checklist Added 9/2020

Standards	
Check the Access Board's standards that apply to the EIT purchase:	
	1194.21 Software Applications and Operating Systems
	1194.22 Web-based Information or applications

	1194.23 Telecommunication Products
	1194.24 Video and Multimedia Products
	1194.25 Self-Contained Products
	1194.26 Desktop and Portable Computers
	1194.31 Functional Performance Criteria
	1194.41 Information, Documentation and Support
	Request vendor Section 508 compliance template (e.g. vendor's website or other website location)
Exceptions	
	EIT acquired by a contractor incidental to a FAA contract
	EIT for a national security system
	EIT located in spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment
	EIT that would impose an undue burden on the agency
	EIT that would impose a fundamental alteration in the nature of an EIT product or its components
Research	
After market research, the product is considered:	
	Compliant
	Partially compliant
	Noncompliant
	EIT is not available

E. Appendix Added 9/2020

1. Guide to Establishing a Qualified Vendors List (QVL) Added 9/2020

1 Introduction

A Qualified Vendors List (QVL) is a list of service or product providers who have had their products or services examined, tested or evaluated and who have satisfied all applicable qualification requirements. QVLs are intended as a mechanism to establish a pool of qualified vendors, any of which FAA would be satisfied with the products delivered or services performed. Pre-screening

vendors allows only those most qualified contractors to perform a particular service or provide a particular product during a specific period.

2 Purpose

QVLs are most appropriate when the contracting office can reasonably anticipate recurring or repetitive requirements for the same or similar supplies or services. When planning a QVL, consider the scope of work to be performed, e.g., would it apply to only one region or center, or would requirements from several technical offices be combined. The procurement team should determine the extent of any testing, capability demonstrations, samples, etc. that may involve an expense. If testing, demonstrations, etc. are necessary, the SIR should be explicit as to whom would bear the cost. The procurement team must secure the necessary funds to accomplish these activities if FAA is to bear the costs.

3 Public Announcement

If the total amount of potential procurements under the QVL are anticipated to exceed \$150,000, the CO must make a public announcement. In addition, all potential procurements of products available from Federal Prison Industries that are anticipated to exceed \$10,000 must follow the public announcement provisions in AMS 3.2.1.3.12. If it is anticipated that a planned QVL will not exceed \$150,000 over its anticipated life and public announcement is not otherwise required, wide dissemination of the intention to establish the QVL would improve the chances of obtaining additional quality vendors.

4 Screening and Evaluation

- a. Prepare screening and evaluation procedures according to AMS Policy Section 3.
- b. The CO, in conjunction with the procurement team, should formulate appropriate evaluation criteria for screening and qualifying vendors. The procurement team should carefully craft evaluation criteria to focus on key discriminators. Evaluation criteria should be tailored to the particular requirement. The procurement team should develop an evaluation plan describing how vendors will be evaluated and against what criteria.
- c. The screening information request (SIR) indicates the following:
 - (1) A QVL is being established;
 - (2) Types of products or services anticipated to be solicited and awarded;
 - (3) Criteria vendors must meet to qualify for the QVL;
 - (4) Information prospective vendors must submit (including the submission due date);
 - (5) Duration of the QVL;

- (6) A brief explanation of the award process for procurements once the QVL has been established, including any method for eliminating firms from the QVL for repeatedly failing to respond to SIRs;
- (7) Method for selecting vendors to compete for a specific requirement once the QVL is established;
- (8) Method for updating the QVL, including any method for requiring vendors to re-qualify for the QVL;
- (9) Method for canceling the QVL; and
- (10) Geographical area limitations, if appropriate.

5 Evaluating Prospective Vendors

- a. The CO should prepare an evaluation plan. Evaluators must follow the plan and criteria, and provide a thorough evaluation of the qualified vendors expressing an interest.
- b. The number of vendors on a QVL should be appropriate for the types of requirements being purchased.

6 Notifying Vendors Excluded from a QVL

- a. Notify vendors who were unsuccessful in qualifying for a QVL as soon as the decision is made on their individual submission, but no later than the issuance of the QVL. A debriefing should be provided, if requested, in accordance with AMS Policy Section 3.
- b. A public announcement is recommended upon establishing a QVL.

7 Competing Requirements Among Vendors on QVL

- a. Vendors are to be informed in the initial SIR establishing the QVL of the method of selection for competing for planned procurements under the QVL. The CO has discretion to tailor the method of QVL vendor competition to the planned requirements or to the size and nature of the QVL. Once the CO establishes a method of competing requirements, it must be used for all procurements under that particular QVL.
- b. There must be adequate competition for procurements under a QVL. The incumbent contractor should always be permitted to compete for any follow-on requirement solicited under the QVL, unless otherwise precluded from competing under follow-on competition by a specific Organizational Conflict of Interest provision or documented poor past performance.

8 Updating a QVL

- a. The CO should update QVLs on a periodic basis to allow new vendors an opportunity to qualify. There is no prescribed time when a QVL should be updated because every QVL will be different. Factors such as volume of procurements, size of the industry for the products or services, time and effort involved in establishing a new QVL will influence how often a QVL is updated.
- b. At the stated time for updating a QVL, request a written confirmation of each vendor's desire to remain on the QVL. Any vendor not responding to the request for confirmation may be deleted as an indication of lack of interest. Vendors may request to withdraw at any time by submitting a written request to the CO.
- c. If at any time, a vendor on an established QVL has performance difficulties, changes ownership, or otherwise becomes less than highly qualified, the CO may request that vendor re-qualify by submitting qualification information again. Notify the vendor of the reasons it is being required to re-qualify.

9 Cancelling a QVL

There may be situations when a QVL becomes underutilized. In these cases, the CO should consider canceling the QVL, when it is in the best interest of the Government. When canceling a QVL, the CO should notify all vendors in writing and provide a brief explanation of the reasons and whether there are any plans to replace or combine the QVL requirements with other requirements.

10 Availability of Information

Names of firms on an established QVL should be provided to the public upon request. Potential subcontractors may wish to pursue opportunities which may exist for future projects. Also, the CO should consider sharing the information with other FAA offices. General information such as the nature of the QVL, vendor names, duration of the QVL, and a point of contact for further information could be distributed or posted on the Internet.

11 QVL for Products

Products must meet specification requirements. Simply because a product or service appears on a QVL does not constitute endorsement of the product, manufacturer, or other source by FAA. The listing of a product or source does not release the supplier from compliance with the specification. However, it must not be stated or implied that a particular product or source is the only product or source of that type qualified, or that FAA in any way recommends or endorses the products or the sources listed. Reexamining a qualified product or manufacturer is necessary when: the manufacturer has modified its product, or changed the material or the processing sufficiently so that the validity of a previous qualification is questionable; the requirements in the specification have been amended or revised sufficiently to affect the character of the product; or it is otherwise necessary to determine that the quality of the product is maintained in conformance with the specification. Vendors who furnish evidence that their products have successfully passed qualification are eligible for award even though not yet included on the QVL.

2 Past Performance Samples for Products, Services, and Construction Added 9/2020

2.1 Sample 1 - Past Performance Instructions Added 9/2020

Instructions for Providing Past Performance Information

Offerors must submit the following information as part of their proposal for both the offeror and proposed major subcontractors: (The information may be submitted prior to the other parts of the proposal, to assist the government in reducing the evaluation period).

- A. A list of the last “##” contracts and subcontracts completed during the past three years and all contracts and subcontracts currently in process. Contracts listed may include those entered into by the federal government, agencies of state and local governments, and commercial customers. Offerors that are newly formed entities without prior contracts list contracts and subcontracts as required above for all key personnel. Include the following information for each contract and subcontract:
1. Name of contracting activity;
 2. Contract number;
 3. Contract type;
 4. Total contract value;
 5. Contract work;
 6. Contracting Officer and telephone;
 7. Program manager and telephone;
 8. Administrative Contracting Officer, if different from # 6, and telephone; and
 9. List of major subcontractors.
- B. The offeror may provide information on problems encountered on the contracts and subcontracts identified in A above and corrective actions taken to resolve those problems. Offerors provide general information on their performance on the identified contracts. General performance information will be obtained from the references. *(Use this paragraph if written input from the offeror is desired in addition to the information obtained from the references.)*
- C. The offeror may describe any quality awards or certifications that indicate the offeror possesses a high-quality process for developing and producing the product or service required. Such awards or certifications include, the Malcolm Baldrige Quality Award, other government quality awards, and private sector awards or certifications (e.g., the automobile industry's QS 9000, Sematech's SSQA, or ANSI/EIA-599). Identify what segment of the company (one division or the entire company) that received the award or certification. Describe when the award or certification was bestowed. If the award or certification is over three years old, present evidence that the qualifications still apply.
- D. Each offeror will be evaluated on its performance under existing and prior contracts for similar products or services. Performance information may be used for both responsibility determinations and as an evaluation factor against which offerors' relative rankings will be

compared to assure best value to the government. The government will focus on information that demonstrates quality of performance relative to the size and complexity of the procurement under consideration. The Performance Information Form identified in the List of Attachments section will be used to collect this information. References other than those identified by the offeror may be contacted by the FAA with the information received used in the evaluation of the offeror's past performance.

- E. Offerors should send their listed private sector references a letter to the following effect authorizing the reference to provide past performance information to the Government.

Sample Client Authorization Letter (Optional)

Dear "Client":

We are currently responding to the Federal Aviation Administration's SIR No. _____ for the procurement of _____.

The FAA is placing increased emphasis in its procurements on past performance as an evaluation factor. The FAA is requiring that clients of entities responding to its SIRs be identified and their participation in the evaluation process be requested. In the event you are contacted for information on work we have performed, you are hereby authorized to respond to those inquiries.

We have identified Mr./Ms. _____ of your organization as the point of contact based on his/her knowledge concerning our work. Your cooperation is appreciated.
Any questions may be directed to: _____.

Sincerely,

2.2 Sample 2 - Past Performance Evaluation Factors Added 9/2020

Past performance will be evaluated as follows:

1. Past performance will receive 35 percent of the non-cost/price factors ratings. Sub-factors A, B, C, D and E are of equal importance and will receive up to 25 percent of the non- cost/price ratings with the other 10 percent allocated to sub-factor G, quality awards. The criteria for a rating of excellent are described with each sub-factor.
 - A. Quality of Product or Service - compliance with contract requirements - accuracy of reports - technical excellence. Excellent = There were no quality problems.
 - B. Timeliness of Performance - met interim milestones - reliable - responsive to technical direction - completed on time, including wrap-up and contract administration
- no liquidated damages assessed. Excellent = There were no unexcused delays.
 - C. Cost Control - within budget - current accurate and complete billings - relationship of negotiated costs to actuals - cost efficiencies. Excellent = There were no cost issues.

D. Business Practices - effective management - effective small/small disadvantaged business subcontracting program - reasonable/cooperative behavior - flexible - effective contractor recommended solutions - business-like concern for government's interests. Excellent = Response to inquiries, technical/service/administrative issues was effective and responsive.

E. Customer Satisfaction - satisfaction of end users with the contractors service. Excellent = 90 percent or more of end users surveyed rated the service as excellent or better.

F. Where the offeror has demonstrated an exceptional performance level in any of the above five sub-factors additional consideration can be given by the procurement team for that factor. It is expected that this rating will be used in those rare circumstances when contractor performance clearly exceed the performance levels described as "excellent."

G. Receipt of widely recognized quality awards or certifications. Excellent = Malcolm Baldrige Quality award, or equivalent award, covering the entity submitting the offer.

2. Assessment of the offeror's past performance will be one means of evaluating the credibility of the offeror's proposal, and relative capability to meet performance requirements.
3. Information utilized will be obtained from the references listed in the proposal, other sources known to the FAA, consumer protection organizations, and others who may have useful and relevant information. Information will also be considered regarding any significant major subcontractors, and key personnel.
4. Award may be made from the initial offers without discussions. If discussions are held offerors are given an opportunity to address negative reports of past performance, if the offeror has not had a previous opportunity to review the rating. Recent contracts will be examined to ensure that corrective measures have been implemented. Prompt corrective action in isolated instances may not outweigh overall negative trends.
5. Lack of past performance history relating to this SIR (state how lack of past performance history will affect the evaluation, e.g. neutral rating).

2.3 Sample 3B - Past Performance Questionnaire Added 9/2020

SAMPLE 3B - PAST PERFORMANCE QUESTIONNAIRE	
I. CONTRACT IDENTIFICATION	
i. Name:	
ii. Description	

iii.	Geographic distribution of services under this contract, i.e., local, nationwide, worldwide:	
iv.	Number of locations serviced by this contract:	
II. EVALUATION		
A. PERFORMANCE HISTORY:		
1.	To what extent did the contractor adhere to contract delivery schedules.	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum requirements 2 Less than minimum requirements 1
<i>Comment:</i>		
2.	To what extent did the contractor submit required reports and documentation in a timely manner?	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum requirements 2 Less than minimum requirements 1
<i>Comment:</i>		
3.	To what extent were the contractor's reports and documentation accurate and complete?	Considerably surpassed minimum requirements 4 Exceeded minimum contractual requirements 3 Met minimum requirements 2 Less than minimum requirements 1
<i>Comment:</i>		
4.	To what extent was the contractor able to solve contract performance problems without extensive guidance from	Considerably successful 4 Generally successful 3
	government counterparts?	Little success 2 No success 1
<i>Comment:</i>		

5.	To what extent did the contractor display initiative in meeting requirements?	Displayed considerable initiative 4 Displayed some initiative 3 Displayed little initiative 2 Displayed no initiative 1
	Comment:	
6.	Did the contractor commit adequate resources in timely fashion to the contract to meet the requirement and to successfully solve problems?	Provided abundant resources 4 Provided sufficient resources 3 Provided minimal resources 2 Provided insufficient resources 1
	Comment:	
7.	To what extent did the contractor submit change orders and other required proposals in a timely manner?	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum requirements 2 Less than minimum 1
	Comment:	
8.	To what extent did the contractor respond positively and promptly to technical directions, contract change orders, etc.?	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum requirements 2 Less than minimum requirements 1
	Comment:	
9.	To what extent was the contractor's maintenance and problem tracking/reporting documentation timely, accurate, and have appropriate content?	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum requirements 2 Less than minimum requirements 1
	Comment:	

10.	To what extent was the contractor effective in interfacing with the Government's staff?	Extremely effective 4 Generally effective 3 Generally ineffective 2 Extremely ineffective 1
	<i>Comment:</i>	
B. TERMINATION HISTORY		
11.	Has this contract been partially or completely terminated for default or convenience?	Yes [Default Convenience] No If yes, explain (e.g., inability to meet cost, performance, or delivery schedules).
	<i>Comment:</i>	
12.	Are there any pending terminations?	Yes No If yes, explain and indicate the status.
	<i>Comment:</i>	
C. EXPERIENCE HISTORY		
13.	How effective has the contractor been in identifying user requirements?	Extremely effective 4 Generally effective 3 Generally ineffective 2 Extremely ineffective 1
	<i>Comment:</i>	
14.	What level of integration experience has the contractor demonstrated in the reconfiguration of government owned software, commercial software, and government furnished hardware?	Considerable surpass minimum experience 4 Exceeded minimum requirements 3 Met minimum contractual requirements 2 Less than minimum requirements 1
	<i>Comment:</i>	

15.	To what extent was the maintenance and problem reporting/ tracking documentation produced by the contractor's efforts satisfactory to the users?	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum contractual requirements 2 Less than minimum requirements 1
	Comment:	
16.	To what extent did the contractor coordinate, integrate, and provide for effective subcontractor management?	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum requirements 2 Less than minimum requirements 1
	Comment:	
17.	To what extent did the contractor provide timely technical assistance, both on-site and off-site, when responding to problems encountered in the field?	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum requirements 2 Less than minimum requirements 1
	Comment:	
18.	To what extent did the contractor achieve effective logistics support, i.e., replacement parts, personnel, etc.?	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum requirements 2 Less than minimum requirements 1
	Comment:	
19.	To what extent did the contractor provide quality replacement parts?	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum requirements 2 Less than minimum requirements 1
	Comment:	

20.	To what extent did the contractor meet the repair/response times in the contract?	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum requirements 2 Less than minimum requirements 1
	Comment:	
21.	Did this contract include a Help Desk?	Yes No
	If yes, to what extent was the contractor responsive to users contacting the Help Desk for assistance?	Considerably surpassed minimum requirements 4 Exceeded minimum requirements 3 Met minimum requirements 2 Less than minimum requirements 1
	Comment:	
22.	If there was a Help Desk, were users able to make contact with the Help Desk personnel on their first attempt?	Always able on the first attempt 4 More often than not on the first attempt 3 Rarely able on the first attempt 2 Never on the first attempt 1
	Comment:	
23.	Were the Help Desk personnel courteous and responsive?	Always courteous and responsive 4 Usually courteous and responsive 3 Rarely courteous and responsive 2 Never courteous and responsive 1
	Comment:	
24.	Were user questions resolved in a timely manner?	Always resolved in a timely manner 4 Usually resolved in a timely manner 3 Rarely resolved in a timely manner 2 Never resolved in a timely manner 1

	Comment:	
25.	How technically qualified were the Help Desk personnel?	Extremely qualified 4 Satisfactorily qualified 3 Minimally qualified 2 Technically deficient 1
	Comment:	
26.	How satisfied are you with the contractor's Help Desk problem escalation procedures?	Extremely satisfied 4 Satisfactorily satisfied 3
		Minimally satisfied 2 Unsatisfied 1
	Comment:	
27.	How technically qualified were the maintenance personnel?	Extremely qualified 4 Satisfactorily qualified 3 Minimally qualified 2 Technically deficient 1
	Comment:	
D. COST MANAGEMENT		
28.	To what extent did the contractor meet the proposed cost estimates?	Less than estimated cost 4 Comparatively equal to estimate 3 Exceeded the costs 2 Considerably surpassed estimate 1
	Comment:	
E.	NARRATIVE SUMMARY	Use this section to explain additional information not included above.
	Comment:	

2.4 Sample 3C - Business Management Past Performance Summary Added 9/2020

Part A. Contract Summary						
1. Contractor Name:				2. Contract Number:		
Street:				3. Contract Type:		
City:				4. Competitive:		yes no
State:		Zip Code:		5. Follow-on:		yes no
Telephone:				6. Period of Performance:		
7. Contract Cost Data			Estimated Cost		Fee	Total Value
Firm Fixed Price						
Initial Contract Cost			\$		\$	\$
Current Contract Cost			\$		\$	\$
8. Product Description and/or Services Provided.						
Part B. Performance Evaluation of Contract (Summary)						
Performance Elements	Excellent	Good	Fair	Poor	Unsatisfactory	
9. Quality of Work						
10. Timely Performance						
11. Effectiveness of Management						
12. Compliance with Labor Standards						
13. Compliance with Safety Standards						
14. Handling Staff Integrity Issues						
15. Facility Maintenance & Repair						
16. Personnel Management Practices						
17. Overall Evaluation						
18. Remarks on excellent performance. Provide data supporting this observation. <i>[Continue on separate sheet(s) if needed.]</i>						

19. Remarks on unsatisfactory performance. Provide data supporting the observation. <i>[Continue on separate sheet(s) if needed.]</i>			
Part C. Identification of Evaluator			
20. Name:		21. Organization:	
22. Title:		23. Date:	
NOTE: If verbal telephonic response received, complete the following:	24. Information obtained by:		25. Signature

2.5 Sample 4 Survey Form Added 9/2020

Please provide concise comments regarding your overall assessment of the contractor's performance on the contract identified. Because of the nature of the contract to be awarded, please focus on system integration and installation aspects, when possible, rather than development or production. Please respond to each question in a narrative format. Please telefax your response to the attention of the following point of contact. Please call the individual cited before faxing your response.					
Responses are needed by					
Section 1. Identification of Point of Contact					
Program Name					
Name					
Address					
Telephone Number		Voice		FAX	
Section 2. Performance Verification					
Fact Finding Questionnaire for					
NOTE: We have reviewed the latest Contractor's Performance Annual Review (CPAR) on file		(dated)			
If you can provide any further information, please respond to the questionnaire. If there are no further updates, no further information will be required. <i>(Use this paragraph when looking for additional information on CPARs.)</i>					
Contract Information					
Contractor/Division:					

Program Name:			
Contract Type		Contract Number:	
Period of Contract		to:	
Respondent Identification			
Name		Position	
Telephone No. (Voice)		Telephone No. (FAX)	
Business Address			
City, ST		Zip Code	
Relation to Program:			
Give a brief, general description of what the contractor was required to deliver. (If the work included installation/integration of (WIDGET) systems, please identify locations and types of systems.) Please note that if a negative reply is supplied, a clarification request is submitted to the contractor, and they in turn have the right to be made aware of the comment.			
Evaluation Criteria			
1. Contractor Management			
1.a. Discuss responsiveness of the contractor's upper level management to your organization's concerns and needs.			
1.b. Describe how well the contractor's management interfaced with your staff and organization.			
1.c. Discuss how well the contractor's management system provided visibility into progress/problems/risks in the technical, cost, and schedule areas, and how well the risks were minimized.			
1.d. Discuss how well the contractor managed its subcontractors. (If there was a subcontractor, please include how the contractor maintained oversight of the sub.)			
1.e. If your contract involved the issuing of delivery orders, please discuss any problems the contractor had in responding to them (e.g., excessive workload due to conflicts with other contracts).			
2. Technical			
2.a. Did the contractor exhibit and exercise a sound engineering approach to the contract?			

2.b. Did the contractor personnel have adequate experience to perform the tasks required? (Please include specifics as to personnel to perform design, system integration, test, and equipment installations.)
2.c. Discuss how well the contractor met the specification requirements for the system, hardware, and software.
2.d. Discuss the contractor's ability to achieve the required reliability and maintainability without undue schedule delay or cost overrun.
2.e. How well was the contractor able to achieve a final design which was producible and supportable?
2.f. How well did the contractor respond when any technical problems were encountered (e.g., in areas of timelines and technical adequacy)?
2.g. If the contractor was required to perform work outside the Continental United States (CONUS), please indicate locations and types of work done; also please discuss how familiar the contractor was with CONUS work (e.g., work permits, local taxes, host nation agreements, etc.).
2.h. When encountering problems in the field, was the contractor able to provide timely technical assistance both on-site and off?
3. Logistics and Supportability
3.a. Discuss any major problems incurred by the contractor in achieving effective logistics support.
3.b. Was Contractor Logistics Support (CLS) part of the contract? If so, was CLS timely and effective?
3.c. Discuss whether the support equipment and manuals were adequate.
3.d. Did any product failures occur while under warranty? If so, please indicate how responsive the contractor was to correct the deficiency.

4. Quality Assurance				
4.a. Discuss the contractor's quality assurance plan and its effectiveness.				
4.b. Discuss the contractor's quality control during system design, integration, test, and installation. (Please include discussion on amount of scrap, repair, and rework activities.)				
5. Schedule				
5.a. Did the contractor deliver on time? Discuss any schedule overruns and how the contractor minimized them.				
5.b. If there were schedule changes, please explain what percentage was attributed to government changes (or your organization's changes) or other factors.				
6. Cost				
6.a. Contract Dollar Amounts				
Original				
Current				
Estimate of Final				
For Award Fee Contracts				
Percentage of Award Fee Paid				
6.b. Were there cost overruns? If yes, how much was attributable to the contractor?				
6.c. Reasons for cost variances.				
7. Overall				
7.a. Based upon your answers to 1-6, how well did the contractor perform? (Mark with an "X".)				
	<u>Exceptional</u>	<u>Satisfactory</u>	<u>Marginal</u>	<u>Unsatisfactory</u>
Management				
Technical				

Log & Support				
Quality Assurance				
Schedule				
Cost				
7.b. Please provide any additional comments which you believe are important in the evaluation of the contractor's performance.				
7.c. If you had the change to do this again, would you use this contractor again?				
Thank you for your efforts and timely response.				
(Your Name)		Chairperson		
(Program Name)				

Section Revised: T3.8.7 – Construction Contracting

Procurement Guidance - (~~4/2021~~7/2021)

T3.8.7 Construction Contracting Revised 8/2009

A Construction Contracting Added 7/2007

- 1 General Added 7/2007
- 2 Dismantling, Demolition and Removal of Improvements Revised 10/2020
- 3 Salvageable Property Added 7/2007
- 4 Laws, Regulations and Standards Revised 4/2017
- 5 Design-Build Revised 1/2016
- 6 Reserved Revised 10/2014
- 7 Planning and Pre-Solicitation Revised 7/2020
- 8 Pre-Award Revised ~~4/2021~~7/2021
- 9 Post-Award Revised 10/2018
- 10 Contract Acceptance Inspection (CAI) Revised 4/2012
- 11 Contract Completion/Closeout Revised 8/2009

B Clauses Added 7/2007

C Forms Added 7/2007

T3.8.7 Construction Contracting Revised 8/2009

A Construction Contracting Added 7/2007

1 General Added 7/2007

- a. Guidance in this section applies to construction contracts, contracts for dismantling, demolition, or removal of improvements, and to the construction portion of contracts for products or services. In the event that the portions of multipurpose contracts are so commingled that priced deliverables for construction, service, or supply cannot be segregated, AMS guidance applicable to the predominant purpose of the contract applies.
- b. "Construction" means construction, alteration, or repair of buildings, structures, or other real property. For purposes of this definition, the terms "buildings, structures, or other real property" include but are not limited to improvements of all types, such as maintenance facilities, duct banks, air traffic control facilities, communication towers, radar facilities, office facilities, airport facilities, and navigational aids.
- c. When performing construction, alteration, or repair work in FAA-leased space, the Contracting Officer (CO) must consult with his or her local Real Estate Contracting Officer (RECO) to determine FAA's alteration rights and responsibilities.

2 Dismantling, Demolition and Removal of Improvements Revised 10/2020

- a. If a contract is solely for dismantling, demolition, or removal of improvements and will exceed \$10,000, the Service Contract Labor Standards applies unless further work is contemplated that will result in the construction, alteration or repair of a public building or public work at that location is contemplated. If further construction work is intended, even though by separate contract, then the Davis-Bacon Act applies to the contract for dismantling, demolition, or removal.

3 Salvageable Property Added 7/2007

- a. The procurement team (CO, program official, legal counsel, and other support staff) should consider the usefulness to FAA of all salvageable property. Any of the property having a salvage value that is less than its usefulness to FAA should be expressly designated in the contract for retention by FAA. The contract may provide that:
 - (1) The FAA pays the contractor for the reasonable costs of the dismantling or demolition of the structure(s);
 - (2) The contractor pays FAA for the right to salvage and remove the materials resulting from the dismantling or demolition operation; or

- b. A combination of both. Both the FAA and contractor must ensure compliance with environmental laws and regulations, including handling of hazardous waste. The procurement team should determine the fair market value of any property not to be retained by FAA, because the contractor may receive title to this property. Its value will therefore be important in determining what payment, if any, should be made to the contractor, and whether additional compensation will be made if the contract is terminated. Personal Property Managers, in conjunction with the procurement team, must approve the disposition of Government property to be transferred to contractors under dismantling, demolition or removal of improvements contracts.

4 Laws, Regulations and Standards Revised 4/2017

a. *Davis-Bacon Act.* The Davis-Bacon Act applies to construction contracts greater than \$10,000.

b. *State Regulation of Federal Construction Projects.*

(1) FAA contractors may encounter requests from State and local governments for the FAA's contractors to obtain building permits, zoning approval, sanitation approval, etc. Based on the "Supremacy" clause of Article 6 of the United States Constitution, construction contractors are not required to obtain most permits or approvals for work done on Federal construction projects. The States do have enforcement authority for safety and environmental protection as specified by the Occupational Safety and Health Administration (OSHA), the Comprehensive Environmental Response, compensation and Liability (Superfund) Act (CERCLA), and the Resource Conservation and Recovery Act (RCRA).

(2) Contractors who encounter attempts by State or local government entities to assess various types of fees against a FAA construction project should be advised to inform the CO immediately if the assessing entity attempts in any way to prevent or hinder the contractor at the job site. The CO should seek legal advice from either Regional Counsel or AGC-500.

c. *Local Employment in Construction Contracts.* Occasionally, efforts are made by State or local governments to have FAA limit employment on construction projects to local residents or firms. Such a restriction has been held to be improper, and should not be used in FAA contracts (reference Washington State Supreme Court case Laborers Local Union No. 374 v. Felton Construction Co., Nov. 24, 1982, and 42 Comp. Gen. 1, B-198952, 81-1 CPD 467). FAA recognizes that Tribal Employment Rights Ordinances (TERO) which affects projects on or near certain Indian reservations may have an effect on contractor labor. FAA should inform offerors of the existence of a TERO in the screening information request (SIR).

d. *Domestic Materials.* The Buy American Act applies to construction, alteration, and repair contracts performed in the United States. It requires contractors to use domestic materials, except under specific circumstances. Also, the Buy American provisions of the Aviation Safety and Capacity Expansion Act of 1990 require FAA to use domestic steel and manufactured

products, unless an exception applies. (See AMS Procurement Guidance T3.6.4)

5 Design-Build Revised 1/2016

a. *General.* Design-build is a contracting technique that allows a single procurement for both design and construction of a project. Design-build allows the contractor flexibility, to the extent allowable or reasonable, for innovation in design, materials, and construction methods utilized in a construction project.

b. *Considerations for Using Design-Build.*

(1) When planning a design-build, the procurement team (Contracting Officer (CO), program official, legal counsel and others supporting a project) should consider the following factors:

- (a) Extent to which requirements are defined;
 - (b) Time constraints;
 - (c) The potential for delays, modifications, and scope changes;
 - (d) Potential regulatory or environmental issues;
 - (e) Construction issues, including differing site conditions and schedules;
 - (f) Risks to FAA, including potential liabilities and meeting stipulated performance standards;
 - (g) Availability and type of funding, including funding issues that may arise from a large design-build project that covers multiple fiscal years; and
 - (h) Availability of qualified design-build contractors.
- (2) When considering design-build, the procurement team must judge who is in the best position, FAA or a contractor, to manage and control potential issues or risks for a particular project. Under a design-build, the contractor assumes the greater responsibility and risk. Claims for design errors or delays are not allowed and the potential for other types of claims are greatly reduced.

c. *Design-Build Source Selection.*

(1) *Two-Phase SIR.* While a CO may choose to award a contract based on one SIR requiring a single offer (that includes an offeror's technical and pricing information), the CO may instead issue a two-phase SIR that allows the CO to screen technical proposals and down-

select offerors prior to requesting a price proposal.

(a) Phase one involves the request for and evaluation of technical proposals from offerors, and no pricing is involved. The goal is to determine the acceptability of the technical proposals prior to the submission of pricing. Technical information that may be requested from offerors includes, but is not limited to:

(i) Technical capabilities;

(ii) Experience/past performance (such as experience in a given field or industry or on-airport experience);

(iii) Engineering approach;

(iv) Special manufacturing processes; and

(v) Joint experience of design and construction management teams.

(b) Phase two involves the submission of pricing proposals by only those offerors determined to be technically acceptable in step one. Trade-offs in phase 2 are allowable.

(c) Factors the CO should consider for using a two-phase SIR include:

(i) Specifications or descriptions are not definite or complete;

(ii) Definite criteria exist for the evaluation of technical proposals, experience, or past performance;

(iii) Two or more sources are expected; and

(iv) FAA personnel (i.e. CO, engineers, etc.) are available to evaluate/manage a two-phase SIR.

(2) *Cost-Reimbursement Contract*. When a design-build project involves numerous uncertainties or the project has yet to be fully developed, a cost-reimbursement, rather than a fixed-price, contract may be appropriate. Rare situations that may warrant a cost-reimbursement design-build contract are:

(a) Highly technical or next generation projects that do not have an effective design benchmark; and

(b) Projects with multiple uncertainties, for example:

(i) Site conditions or locations that create unique and unplanned impacts

to the project;

(ii) New technology that may create integration issues when introduced to current systems; and

(iii) Hazardous waste remediation where the scope of the clean-up cannot be completely defined.

(3) *Design Competition*. Design-build may include “design competition” as a basis for selecting a vendor for the project. FAA provides general design requirements or constraints and offerors prepare a preliminary design or specification for FAA evaluation. Depending on the scope of the project and availability of funding, FAA may authorize a fixed payment to compensate offerors for work done during the design competition.

6 Reserved Revised 10/2014

7 Planning and Pre-Solicitation Revised 7/2020

- a. *Type of Contract and Pricing*. Generally, construction should be acquired on a firm-fixed price basis. Pricing may be on a lump sum basis (when a lump sum is paid for the total work or defined parts of the work), on a unit price basis (when a unit price is paid for a specified quantity of work units), or using a combination of the two.
- b. *Options*. If in FAA’s best interest, COs may include options in construction contracts. Solicitations must state whether options will or will not be evaluated for purposes of award. Appropriate use of options in construction contracts includes:
- (1) Additional work is anticipated but sufficient funds are not anticipated or available prior to the time of award, and it would not be in FAA’s best interest to award a separate contract or have another contractor work on the site; and
 - (2) If fixed building equipment is installed under the contract and it would be in FAA’s best interest to have the installer maintain and service the equipment during the warranty period.
- c. *Property*. Before issuing the solicitation, the CO must document if materials for the project will be Government Furnished Property (GFP) or furnished by the contractor. The requiring organization prepares the GFP list, and the list must be included in the solicitation to ensure that any proposals received account for the source of project material.
- d. *Insurance*. If in the best interest of FAA, the CO may require the contractor to carry insurance, especially if the work is to be done on an FAA facility or FAA property is involved. The CO must ensure the contractor submits all required insurance documents and the documents are acceptable before issuing the notice to proceed (NTP). An original copy of the proof of insurance must be

retained in the contract file.

e. *Bonds*. Per the Miller Act (40 U.S.C.A Section 3131), performance and payment bonds are required for all construction contracts that exceed \$150,000. The amount of the bonds should reflect the minimum amount required to protect FAA interests. An original copy of any bond must be retained in the contract file. The CO will not issue the NTP until required bonds have been received.

f. *Source Evaluation Plan*. The CO's method of selection and evaluation criteria must be documented in the contract file. This may be done by establishing an evaluation plan as described under Complex and Noncommercial Source Selection (See AMS3.2.2.3).

g. *Basis for Award*. Award may be based on the lowest price, technically acceptable offer when best value is expected to result from a technically acceptable proposal with the lowest price.

(1) All evaluation factors (non-cost) that will be used to determine if an offeror is technically acceptable will be set forth in the solicitation.

(2) The solicitation must specify that award will be made to the lowest priced offer meeting or exceeding the acceptability standards for non-cost factors.

(3) Tradeoffs are not permitted.

(4) Non-cost factors are used to evaluate acceptability and not to rank proposals.

(5) Discussions regarding proposals may occur.

h. *Differing Site Conditions*. The purpose of the "Differing Site Conditions" clause is to encourage offerors to limit inclusion of contingency costs in their offers for conditions that are not reasonably foreseeable. The clause will also assist FAA and the contractor in complying with the Archaeological Resources Protection Act of 1979 (36 CFR 1214).

i. *Construction Moratoriums*. When in the planning stages of a construction project, the procurement team must consider any impacts construction moratoriums may have upon the project and its related schedule.

j. *Disclosure of the Size of Construction Projects*. When the estimated price of the proposed construction project is \$150,000 or more, public announcement (if required) and SIRs should state the size of the requirements in terms of a physical description of the project and the estimated price. The estimated price may be described in a price range as determined by the procurement team or in terms of one of the following price ranges:

(1) Between \$50,000 and \$100,000; (2)

Between \$100,000 and \$250,000; (3)

Between \$250,000 and \$500,000; (4)

Between \$500,000 and \$1,000,000;

(5) Between \$1,000,000 and \$5,000,000;

(6) Between \$5,000,000 and \$10,000,000; or (7)

More than \$10,000,000

k. Environment and Conservation.

(1) If a CO becomes aware of contractor noncompliance with environmental standards (to include clean air and water standards), the CO is to notify FAA officials and the Environmental Protection Agency (EPA).

(2) The CO has a responsibility to help coordinate and ensure that any hazardous materials present or introduced during the performance of a contract are appropriately managed and tracked.

(3) Products used for a project must adhere to agency goals established in FAA's Green Procurement Plan (GPP), and each contract must include GPP compliance provisions to ensure the contractor understands applicable FAA energy conservation and recovered material, or recycled content product, standards.

(4) Refer to AMS Procurement Guidance T3.6.3 for additional guidance on the protection of the environment and proper conservation during construction contracts, and AMS Real Estate Guidance 2.4.16.3 for information regarding the Guiding Principles for Federal Leadership in High Performance and Sustainable Buildings.

l. *Subcontracting Plan.* When a project is expected to exceed \$1.5 million is not an 8(a), SDVOSB, or small business set-aside, and subcontracting opportunities exist, the CO should include provisions for a small business subcontracting plan in the solicitation.

m. *Patent and Data Rights.* The CO should ensure appropriate patent and data rights clauses are included in the solicitation when the project is for other than standard types of construction and may involve unique products, materials, or processes.

n. *Value Engineering.* Value engineering provisions in the solicitation may be appropriate to allow the contractor to initiate changes in design, specifications, or other requirements and share in any savings that may result.

a. *Public Announcement.* All procurements, including construction, over \$150,000 must be publicly announced on the Internet or through other means. For example, the announcement could be placed on the ~~FAA ContractingContract~~ Opportunities ~~website~~page on [SAM.gov](https://www.sam.gov).

b. Inspection of Site and Examination of Data.

(1) The procurement team should make appropriate arrangements for prospective offerors to inspect the work site prior to submission of offers. The procurement team should also allow prospective offerors the opportunity to examine data in the possession of FAA that may provide information concerning the performance of the work, such as boring samples, original boring logs, geology reports, and record and plans of previous construction. The SIR should notify offerors of the time(s) and place(s) for the site inspection and data examination, as well as the name and telephone number of the contact point at the facility. The procurement team should keep a record of the identity and affiliation of all offeror representatives who inspect the site or examine FAA site information.

(2) Significant site information should be made available to all offerors, including information regarding any utilities to be furnished during construction. FAA personnel must not provide information that conflicts with the provisions of the SIR.

(3) The CO must notify all potential offerors of any clarification or correction to the SIR package.

c. *Past Performance.* Past performance can aid in selecting the contractor who is most likely to perform satisfactorily. Key to the successful use of past performance in the screening process is establishing a clear relationship between the statement of work (SOW), the instructions to offerors, and the evaluation criteria. Past performance information that is not important to the current acquisition should not be included.

d. *Pre-Award Survey.* COs may use pre-award surveys to aid in gathering past performance information. The pre-award survey can give the CO a sense of how the contractor will perform, especially if concentrating on projects that are similar in type and scope to the one being solicited. The scope of the pre-award survey is at the discretion of the CO as it may be affected by the size and complexity of the solicitation and project.

9 Post-Award Revised 10/2018

a. Assignment of Inspection and Contract Administration.

(1) Due to the locations and complexity of most construction projects, COs often accomplish their administrative and inspection functions through utilization of Contracting Officer's Representatives (COR). These personnel are normally present at the job site each day, and are in the best position to observe day-to-day activities and performance. CORs on site perform such delegated duties as daily performance inspections, Department of Labor

wage rate interviews with contractor personnel, provide minor clarifications of specifications and drawings, and insure contractor compliance with all safety and labor requirements on site. The duties of these individuals must be clearly annotated by the CO in a COR Delegation Form. A copy of the COR Delegation Form is provided to the COR and the contractor. See AMS Procurement Forms for the COR Delegation Form.

(2) Only the CO, or person delegated specific authority to execute contract modifications, may authorize a change to the original contract.

- b. *Notice to Proceed (NTP)*. The NTP is issued to give notice to the contractor when on-site work can be started, when the project is to be completed based upon the performance time in the contract, and any other information deemed pertinent by the CO. Prior to its issuance, the CO must ensure all required submittals have been delivered to and approved by the FAA, that all required insurance and bonding documents have been submitted and are acceptable, and other coordination or applicable documentation has been completed.
- c. *Preconstruction Conference*. The CO may conduct a preconstruction conference (to discuss matters such as applicable labor standards, the authority of various personnel, safety, and environmental considerations) prior to the start of a construction or demolition contract. Pre-construction conferences are not a requirement for each project. When deciding on a conference, the CO should weigh the administrative costs, time, and possible travel expenses for all parties involved, against the complexity of the requirement, the impact of the requirement on entities involved with the site, and the past performance and technical knowledge of the contractor. For a preconstruction conference agenda and checklist, see AMS Procurement Forms.
- d. *Use and Possession Prior to Completion*. Beneficial occupancy occurs when the Government takes possession of, or puts to use, a completed or partially completed part of the work. It does not constitute acceptance of the facility as constructed. The clause "Use and Possession Prior to Completion" addresses some of the issues associated with beneficial occupancy. If it is foreseen prior to contract inception that beneficial occupancy will become an issue, or if it becomes an issue during contract performance, the CO should consider negotiating contract terms which cover relevant issues for that contract, e.g., date of warranty, builder's risk coverage, coordination with the contractor, etc. Legal counsel should be consulted on the legal ramifications of beneficial occupancy. Phased (partial) acceptance can be used as an alternative to beneficial occupancy, if the need can be identified sufficiently in advance to structure the contract accordingly, and it is determined in the best interests of the parties.
- e. *Airport Coordination*. Local airport authorities and/or other Federal agencies may have requirements and regulations outside of those imposed by the FAA that a contractor is required to adhere to when completing a construction project on an airport. These additional requirements may include additional security, insurance, and safety requirements. It is the responsibility of the contractor to coordinate with other authorities or agencies prior to performance to ensure they satisfy any applicable local regulations.

- f. *Property Protection.* The FAA must ensure that the contractor understands that throughout the performance of the contract, care must be taken by the contractor to protect FAA and/or other property that may be affected during construction.
- g. *Prime Contractor Performance.* The use of subcontractors by a prime contractor during the performance of a construction contract is inevitable and at times presents a savings to the FAA through the contract. For example, the prime contractor may lack the internal capability to provide specific trades required to meet all the terms and conditions of the contract. The CO should assure adequate interest in and supervision of work involved in projects. The contractor shall be required to perform a significant part of the contract with its own work force and express this requirement in terms of a percentage of the total work, for example:
- (1) The prime contractor must perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees on site.
 - (2) Construction by special trade contractors: The prime contractor must perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees on site.
- h. *Contractor's Daily Log.* For any construction contract greater than \$10,000, the contractor is required to submit to the CO a "Daily Log" of activity on the site. The logs must include the workers used by classification, construction equipment moved on and off the site, materials and equipment delivered to the site, inspections and tests performed, and total cumulative hours worked.
- i. *Suspension of Work.* The COR should notify the CO when a suspension order is necessary to prevent the contractor from proceeding with work that will have to be removed or changed. Only the CO can order a suspension of work; when possible, the CO should use partial, rather than, total suspension orders.
- j. *Warranties.* The CO should obtain information about any warranties from the contractor. This information should include effective dates and names, addresses, and contacts. A list of warranty or guarantee expiration dates is made and retained, and copies are provided to the user.
- k. *Asbestos NESHAP Compliance.* The contractor must comply with all federal, state, and local requirements regarding building demolition and/or the removal of any asbestos in accordance with the asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP). AMS clause 3.6.3-24 "Asbestos NESHAP Compliance" applies in such situations.

10 Contract Acceptance Inspection (CAI) Revised 4/2012

a. Definitions:

- (1) *Contract Acceptance Inspection (CAI):* Formal inspection by the Project Implementer of a constructed facility when work under the contract is considered to be substantially

complete. The CAI is typically requested by the prime contractor and coordinated with the Project Implementer.

(2) *Joint Acceptance Inspection (JAI)*: The JAI is an activity to gain consensus of all involved groups that projects for facility, system, or equipment establishment, improvement, or relocation are completed in accordance with national criteria and that the facility is capable of performing its advertised functions.

(3) *Project Implementer (PI)*: The PI is the FAA organization implementing the project, although funding may be provided by other organizations. In most cases this will be ATO Technical Operations (ATO-W) Engineering Services.

b. *Contract Acceptance Inspection (CAI)*. The Project Implementer, usually a Contracting Officer's Representative (COR) appointed in ATO-W Engineering Services and delegated by the Contracting Officer (CO), is responsible for formally inspecting a constructed facility from the construction or equipment installation contractor and recommending acceptance or non- acceptance to the CO. This inspection is typically conducted before the beginning of JAI.

c. The CO's responsibility is to formally accept the constructed facility. The CO must notify the contractor when a CAI has been completed and work under a contract has been either accepted or rejected. This should be done through the CAI letter (see Procurement Forms) that describes:

(1) What is being accepted from the contractor (item and description);

(2) The acceptance date of the item; and

(3) Any outstanding commitments the contractor has for the item (e.g. punch list items, warranties, etc.).

d. All CAI letters and associated information should be filed in the official contract file. This documentation is used to support completion of the contract, and to provide data to properly capitalized items.

11 Contract Completion/Closeout Revised 8/2009

a. A construction or installation project must be considered physically and financially complete and funds deobligated, when necessary, within one year after the final acceptance and inspection (e.g., CAI) has been completed.

b. Prior to final payment, the CO must ensure:

(1) Receipt of all required warranty documentation;

(2) Return of issued ID media (Badges, etc.);

- (3) Receipt of any state tax exemption certificates or completion statements as required from the contractor;
- (4) Certification that all government property has either been utilized in the performance of the contract or returned to the FAA;
- (5) Confirmation from the requiring organization that the job has been completed as contracted;
- (6) Receipt of any other applicable items required from the contractor that are unique to the procurement; and
- (7) Receipt of a final release of claims on file signed by the contractor for the final amount of the contract.

B Clauses Added 7/2007

[view contract clauses](#)

C Forms Added 7/2007

[view procurement forms](#)

Section Revised: T3.17 – American Recovery and Reinvestment Act

Procurement Guidance - (~~4/2021~~7/2021)

T3.17 American Recovery and Reinvestment Act Revised 5/2009

A Implementation of Recovery and Reinvestment Act for Contracts Added 4/2009

1 General Requirements Added 4/2009

2 Public Announcement ~~Added 4/2009~~Revised 7/2021

3 Solicitation and Award Revised 1/2010

4 Reporting Revised 1/2010

5 FPDS and Special Notice Requirements Revised 7/2010

6 Whistleblower Protections under the American Recovery and Investment Act Added 4/2009

7 Federally Registered Lobbyists ~~Added 5/2009~~Revised 7/2021

B Clauses Added 4/2009

C Forms Revised 1/2010

T3.17 American Recovery and Reinvestment Act Revised 5/2009

A Implementation of Recovery and Reinvestment Act for Contracts Added 4/2009

1 General Requirements Added 4/2009

- a. The American Recovery and Reinvestment Act (“Recovery Act”), Public Law 111-5, authorizes additional F&E funding for improvements to power systems, air route traffic control centers, air traffic control towers, terminal radar approach control facilities, and navigation and landing equipment. The FAA has identified priority F&E projects within the aforementioned areas. Special contracting requirements described in this guidance apply **only** to procurements funded through the Recovery Act.
- b. The Recovery Act does not provide authority to waive any documentation or approval required for procurement planning, solicitation, evaluation, and award. The Contracting Officer (CO) must comply with existing AMS policy and guidance for any project funded through the Recovery Act.
- c. The Recovery Act requires special reporting from both contractors and FAA. Timeliness and accuracy of data is critical.
- d. Thorough and complete contract documentation and data reporting is especially important considering Recovery Act requirements for increased oversight and review by the Inspector General (IG) and Government Accountability Office (GAO).
- e. The ATO Capital Program Formulation Group (AJF-25) at headquarters will track status of projects, funding, and expenditures for Recovery Act. COs will provide their program offices with estimated procurement lead times and status of solicitation, evaluation and award of Recovery Act projects.

2 Public Announcement ~~Added 4/2009~~ Revised 7/2021

- a. The CO must post presolicitation announcements for all Recovery Act actions exceeding \$25,000 on ~~FAA~~-Contract Opportunities [page on SAM.gov](#). This includes presolicitation announcement for any order expected to exceed \$25,000 under a task or delivery order contract, including Government Wide Acquisition Contracts (GWAC), multi-agency contracts, and Federal Supply Schedule contracts.
- b. For Recovery Act procurements, the following special formatting is required for public announcements:
 - (1) All presolicitation notices must include the word “RECOVERY” as the first word in the title field preceding the actual title in the announcement.
 - (2) Presolicitation notices for task and delivery orders must also include the following statement in the “Description” field preceding the actual description: “THIS NOTICE IS FOR INFORMATION PURPOSES ONLY. THIS OPPORTUNITY IS AVAILABLE ONLY TO

CONTRACTS UNDER COMMITTS, etc.) (insert contracting program name, e.g., BITS, FSS 07 85P,

(3) Contract award announcements are required for any contract, and task and delivery orders exceeding \$25,000, including GWAC, multi-agency contracts, and Federal Supply Schedule contracts. To facilitate transparency and ensure consistency in tracking award announcements for Recovery Act funds, the CO must insert the word “RECOVERY” as the first word in the title field preceding the remaining title ~~in the FAA Contracton Contracting~~ Opportunities page on SAM.gov.

3 Solicitation and Award Revised 1/2010

a. Competition and Fixed Price Awards. To the extent practicable, Recovery Act awards should be competitive and fixed priced. The CO should properly document the rationale when competition or a fixed priced arrangement is not appropriate for Recovery Act-funded awards.

b. Separate Tracking of Recovery Act Funds. To maximize transparency of Recovery Act funds required for reporting by the contractor, the CO should structure contract awards to allow for separate tracking Recovery Act funds and projects. For example, the CO should consider awarding dedicated separate contracts when using Recovery Act funds or establishing CLIN structures so that Recovery funds are not co-mingled with other funds.

c. Contractor Reporting Clause. The CO must insert AMS clause 3.17-1 “American Recovery and Reinvestment Act-Reporting Requirements” in all solicitations, contracts, orders, and modifications funded in whole or in part with Recovery Act funds, except classified solicitations, contracts, and orders. FAA-generated forms and instructions must be used in conjunction with this clause. COs must not use Recovery Act funds on new or existing contracts and orders if this clause is not incorporated.

d. Buy American Act for Recovery Construction. Existing FAA Buy American-Steel and Manufactured Products guidance and clause meet the intent of Recovery Act requirements for domestic preference for steel and manufactured products. All solicitations, contracts, orders, and modifications must include the AMS clause 3.6.4-5 “Buy American--Steel and Manufactured Products” and AMS provision 3.6.4-18 “Certification Regarding Steel and Manufactured Products.”

e. Inspector General and Comptroller General Oversight. To allow for oversight on use of Recovery Act funding, all solicitations, contracts, orders, and modifications must include the AMS clause 3.17-2 “Authority of the Inspector General and Comptroller General Relating to Contracts Using American Recovery and Reinvestment Act Funding.”

f. Procurement Milestones. Upon receiving a procurement request (PR) that cites Recovery Act funds, the CO must send notification to the requesting program office to include:

PR Number and date PR was received;

Planned date of SIR issuance; and Planned date of award.

Program offices will use these milestones to track the obligation of their Recovery Act funded requirements and report on the status of the funds. After the milestones are established, the CO should prepare updates to program offices upon request.

g. *Management Notification.* The CO must notify senior management, e.g., ATO Vice President or Associate Administrator, through his or her respective management chain, of any award over \$25,000 using recovery funds. Notification should occur before signing the award. The notification will be through email and include a subject line "Information - Recovery Act Contract Award," and the contractor's name, brief description of service/supplies, dollar amount, contract type, whether a new award or modification to an existing contract, and period of performance. The CO must also send a courtesy copy of this notification, along with the name of a primary point of contact for the contractor, to ATO Capital Program Formulation Group (AJF-25) at headquarters (send to: kelly.holliday@faa.gov).

h. *Congressional Notification.* Regardless of dollar value, all awards, including modifications or delivery/task orders, that use recovery funds must follow the procedures for Congressional Affairs notification specified in Procurement Guidance T3.13.1 A3. (*Note:* the T3.13.1 exemption for modifications/orders under previously announced awards does not apply to Recovery Act awards). The notification form, DOT-4220.41, Contract Award Notification, must also include "RECOVERY" in bold on line (1) "Operating Administration."

4 Reporting Revised 1/2010

a. *Contractor Reporting on Use of Funds.*

(1) Contractors that receive any awards (including modifications) funded by the Recovery Act must report information including, but not limited to, the dollar amount of contractor invoices, the supplies delivered and services performed and the amount for which the contractor has invoiced, an assessment of the completion status of the work, and an estimate of jobs created and retained as a result of the Recovery Act funded award.

(2) At the time of award, ATO Capital Program Formulation Group (AJF-25) will provide FAA Recovery Act reporting forms and instructions to the contractor. Contractors must report data using the following FAA form:

Monthly Prime and Subcontractor Employment Report

This form must be submitted electronically (in MS Excel format) to an FAA email box for Recovery Act reporting: 9-AJF-CWP-StimulusTracking@faa.gov

ATO Capital Program Formulation Group (AJF-25) will compile all monthly contractor job related information into a report that ABU will consolidate for all FAA Recovery Act projects and grants. ABU will present the consolidated report to the Secretary of Transportation.

b. *Failure to Report.* The CO must make the contractor's failure to comply with the reporting requirements a part of the contractor's past performance information. As with other contract deliverables, the CO may use remedies such as withholding payment or seeking other consideration for a contractor's failure to deliver contractually specified reports within required timeframes.

c. *Purchase Cards.* A special area in the comments field in U.S. Bank's online system has been established for Recovery Act-funded transactions. Purchase card holders must include an adequate description of the supplies/services purchased and the F&E JCN under which the purchase was made in the comments field.

5 FPDS and Special Notice Requirements Revised 7/2010

a. *TAS Code.* When entering data in FPDS on any action (including modifications) funded by the Recovery Act, the CO must enter the Treasury Account Symbol (TAS) in the "Product Title Description" field. The TAS code must be entered with "TAS::" preceding the code and "::TAS" following the code. The TAS code for FAA actions is 69 1304. The entry would appear as follows: TAS::69 1304::TAS

b. *Awards.* The CO must include "RECOVERY" as the first word in the contract description for any Recovery Act contract or order, or modification to an existing contract or order.

c. *Noncompetitive or Not Fixed Price.* For all Recovery Act awards that are not competitively awarded or not fixed price, the CO must prepare a summary of the contract with a description of products or services consistent with the chart below:

Description of Contract Action	Rationale Required?
(1) A contract is competitively awarded and is fixed price	Not Required
(2) A contract is awarded that is not fixed price	Required
(3) A contract is awarded without competition	Required
(4) An order is issued under a new or existing single award indefinite delivery-indefinite quantity (IDIQ) contract	Required if order is made under a contract described in (2) or (3)
(5) An order is issued under a new or existing multiple-award IDIQ contract	Required if one or both of the following conditions exist:
	i. the order is not fixed price

	ii. the order is awarded pursuant to an exception to the competition requirements applicable to the underlying vehicle
(6) A modification is issued	Required if modification is made: i. to a contract described in (2) or (3) above; or ii. to an order requiring posting as described in (4) or (5) above

6 Whistleblower Protections under the American Recovery and Investment Act Added 4/2009

a. This implements Section 1553 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), and applies to all contracts funded in whole or in part by that Act.

b. *Definitions.*

“Board” means the Recovery Accountability and Transparency Board established by Section 1521 of ARRA.

"Covered information" means information that the employee reasonably believes is evidence of gross mismanagement of the contract or subcontract related to covered funds, gross waste of covered funds, a substantial and specific danger to public health or safety related to the implementation or use of covered funds, an abuse of authority related to the implementation or use of covered funds, or a violation of law, rule, or regulation related to an agency contract (including the competition for a negotiation of a contract) awarded or issued relating to covered funds.

"Covered funds" means funds appropriated by or otherwise made available by the ARRA.

“Inspector General” means the Department of Transportation Inspector General appointed under the Inspector General Act of 1978, as amended.

“Non-Federal employer,” as used in this section, means any employer that receives ARRA funds, including a contractor, subcontractor, or other recipient of funds pursuant to a contract or other agreement awarded and administered in accordance with the Federal Aviation Administration Acquisition Management System.

c. General.

(1) Non-Federal employers are prohibited from discharging, demoting or otherwise discriminating against an employee as a reprisal for disclosing covered information to any of the following entities:

(a) The Board.

(b) An Inspector General.

(c) The Comptroller General.

(d) A member of Congress.

(e) A State or Federal regulatory or law enforcement agency.

(f) A person with supervisory authority over the employee or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct.

(g) A court or grand jury.

(h) The head of a Federal agency, or its representatives.

(2) A contracting officer who receives a complaint of reprisal of the type described in paragraph (1) must forward it to legal counsel or to the appropriate party in accordance with agency procedures.

d. Procedures for filing complaints.

(1) An employee who believes that he or she has been subject to reprisal prohibited by ARRA Section 1553 should submit a complaint regarding the reprisal to the Inspector General of the agency that awarded the contract.

(2) The complaint must be signed and must contain

(a) The name of the contractor;

(b) The contract number, if known; if not, a description reasonably sufficient to identify the contract(s) involved;

(c) The covered information giving rise to the disclosure;

(d) The nature of the disclosure giving rise to the discriminatory act; and

(e) The specific nature and date of the reprisal.

e. Procedures for investigating complaints.

(1) Except as provided under T3.17.A.6.d.(1), unless the Inspector General determines that the complaint is frivolous, does not relate to covered funds, or another Federal or State judicial or administrative proceeding has previously been invoked to resolve such complaint, the Inspector General will investigate the complaint, and upon completion of the investigation submit a report of the findings to

- (a) The employee and any person acting on the employee's behalf;
- (b) The employee's employer;
- (c) The head of the appropriate agency: and,
- (d) The Board.

(2) Except as provided at Section T3.17.A.6.e.(1)(c), the Inspector General will, not later than 180 days after receiving a complaint under T3.17.A.6.e.(1):

- (a) Make a determination that the complaint is frivolous, does not relate to covered funds, or another Federal or State judicial or administrative proceeding has been previously invoked to resolve such complaint; or
- (b) Submit a report under T3.17.A.6.e.
- (c) If the Inspector General is unable to complete an investigation under this section in time to submit a report within 180 days after receiving the complaint
 - (i) If the employee submitting the complaint agrees to the extension of time, the Inspector General will submit a report under T3.17.A.6.e. within such additional period of time as must be agreed upon between the Inspector General and the employee submitting the complaint.
 - (ii) The Inspector General should extend the period for not more than 180 days without obtaining the agreement of the person submitting the complaint to such extension, provided that the Inspector General provides a written explanation for the decision which will be provided to both the employee submitting the complaint and the non-Federal employer.
- (d)
 - (i) The Inspector General should decide not to conduct or continue an investigation upon providing to the employee submitting the complaint and the employee's employer a written explanation.
 - (ii) Upon receipt of the Inspector General's decision not to conduct or continue an investigation, the employee must immediately assume the right to a civil remedy under ARRA Section 1553 (c)(3).

f. *Access to Investigative File of Inspector General.*

(1) The non-Federal employee alleging reprisal under this section must have access to the investigation file of the Inspector General, in accordance with the Privacy Act, 5 U.S.C. § 552a. The investigation of the Inspector General must be deemed closed for the purposes of disclosure under such section when an employee files an appeal to the agency head or a court of competent jurisdiction.

(2) In the event the employee alleging reprisal brings a civil action under T3.17.A.6.g., the person alleging the reprisal and the non-Federal employer must have access to the investigative file of the Inspector General in accordance with the Privacy Act.

(3) The inspection should exclude from disclosures made under T3.17.A.1.f.—

(a) Information protected from disclosure by a provision of law; and

(b) Any additional information the Inspector General determines disclosure of which would impede a continuing investigation, provided that such information is disclosed once such disclosure would no longer impede such investigation, unless the inspector general determines that the disclosure of law enforcement techniques, procedures, or information could reasonably be expected to risk circumvention of the law or disclose the identity of a confidential source.

(4) An Inspector General investigating an alleged reprisal under this section should not respond to any inquiry or disclose any information from or about any person alleging such reprisal, except in accordance with the 5 U.S.C. 552a.

g. Remedies and enforcement authority.

(1) *Burden of Proof.*

(a) *Disclosure as contributing factor in reprisal.*

(i) An employee alleging a reprisal under this section must be deemed to have affirmatively established the occurrence of the reprisal if the person demonstrates that a disclosure described in T3.17.A.6.c. was a contributing factor in the reprisal.

(ii) A disclosure should be demonstrated as a contributing factor in a reprisal for purposes of this paragraph by circumstantial evidence, including--

(A) Evidence that the official undertaking the reprisal knew of the disclosure; or

(B) Evidence that the reprisal occurred within a period of time after the disclosure such that a reasonable person could conclude that the disclosure was a contributing factor in the reprisal.

(2) *Opportunity for rebuttal.*

(a) The Administrator should not find the occurrence of a reprisal with respect to a reprisal that is affirmatively established under T3.17.A.6.c. if the non-Federal employer demonstrates by clear and convincing evidence that the non-Federal employer would have taken the action constituting the reprisal in the absence of the disclosure.

(b) No later than 30 days after receiving an Inspector General report under T3.17.A.6.d., the Administrator concerned must determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the complainant to a reprisal prohibited by T3.17.A.6.g.(1) and must either issue an order denying relief in whole or in part or must take one or more of the following actions:

(i) Order the employer to take affirmative action to abate the reprisal.

(ii) Order the employer to reinstate the person to the position that the person held before the reprisal, together with the compensation (including back pay), compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.

(iii) Order the employer to pay the complainant an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the complainant for, or in connection with, bringing the complaint regarding the reprisal.

(c)

(i) The complainant must be deemed to have exhausted all administrative remedies with respect to the complaint, and the complainant should bring a de novo action at law or equity against the employer to seek compensatory damages and other relief available under this section in the appropriate district court of United States, which must have jurisdiction over such an action without regard to the amount in controversy if

(A) The Administrator

(a) Issues an order denying relief in whole or in part under paragraph (a) of this

(b) Has not issued an order within 210 days after the submission of a complaint under section 3.17.A.6.c, or in the case of an extension of time section 3.17.A.6.c, within 30 days after the expiration of the extension of time; or

(c) Decides under 3.17.A.6.c

(i) not to investigate or to discontinue an investigation; and

(B) There is no showing that such delay or decision is due to the bad faith of the complainant.

(ii) Such an action must, at the request of either party to the action, be tried by the court with a jury.

(d) Whenever an employer fails to comply with an order, the Administrator must request the Department of Justice to file an action for enforcement of such order in the district court for a district in which the reprisal was found to have occurred. In any action brought under this section, the court should grant appropriate relief, including injunctive relief, compensatory and exemplary damages, and attorney's fees and costs.

(e) Any person adversely affected or aggrieved by an order issued under this section should obtain review of the order's conformance with the law, and this section, in the United States Court of Appeals for a circuit in which the reprisal is alleged in the order to have occurred. No petition seeking such review should be filed more than 60 days after issuance of the order by the Administrator.

7 Federally Registered Lobbyists ~~Added 5/2009~~ Revised 7/2021

a. The Presidential Memorandum of March 20, 2009, "Ensuring Responsible Spending of Recovery Act Funds," requires that public funds are committed responsibly and in a transparent matter.

b. COs should allow lobbyist communications on procurement opportunities through normal channels, such as the ~~FAA Contract~~ Contracting Opportunities page on SAM.gov, and at widely attended gatherings (e.g., offeror conferences).

c. COs must not have private communications with a lobbyist to discuss market survey information, or for any other purpose. The CO must document that such communications are not being conducted with a lobbyist.

d. As required by T3.2.2, Source Selection Process, a lobbyist must submit question(s) in writing. In addition, both the lobbyist question(s) and the CO's answer(s) must be made available on the FAA Recovery Act website within three days of receipt at: <http://www.faa.gov/recovery/>

e. For more detailed information, see the Presidential Memorandum of March 20, 2009 at: <https://www.gpo.gov/fdsys/pkg/DCPD-200900177/content-detail.html>

B Clauses ~~Added 4/2009~~

[view contract clauses](#)

C Forms Revised 1/2010

[view procurement forms](#)

AJF-25 will send the "Monthly Prime and Subcontractor Employment Report" form directly to the contractor. AJF-25 will copy the CO on the electronic transmission of the Monthly Prime and Subcontractor Employment Report form to the contractor. When the contractor submits the completed form to AJF-25, the contractor will also provide a copy of the completed form to the CO as proof of submission. Form (MS Excel file):

Monthly Prime and Subcontractor Employment Report

Instructions for Forms:

Monthly Prime and Subcontractor Employment Report